

Creating Public Access to the Shoreline:
The California Coast and Boston's Waterfront

by

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Bachelor of Architectural Engineering, Kyoto University, 1986
Master of Architectural Engineering, Kyoto University, 1988

Submitted to the Department of Urban Studies and Planning
in Partial Fulfillment of the Requirements for the Degree of

Master in City Planning

at the

Massachusetts Institute of Technology

June 1996

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ABSTRACT

There has been a growing awareness of the public's right to shoreline access in the context of growth in rural coastal areas as well as of the resurgence of urban waterfronts. In this thesis, two cases: California and Boston, are examined to see how government intervenes in shoreline development in order to create public access. In each case, the historical context of public access, a comprehensive plan containing public access elements, and the form of government intervention are analyzed. Each case study is supplemented by its application to a specific development project.

In California, the citizens' movement in the 1960's and the legislative efforts in the 1970's resulted in the establishment of the coastal agencies: the State Coastal Commission as a regulatory body and the Coastal Conservancy as a project implementation body. Their collaboration has contributed to opening up a large portion of the coastline, where public access was undermined in private development. The Sea Ranch development, however, demonstrates a decade of rigorous negotiation and litigation between the coastal agencies and the developer and the residents.

In Boston, the concern over diminishing waterfront access in exclusive private developments, with a significant regulatory change concerning waterfront development at the state level, set the stage for the creation of a comprehensive waterfront plan. The layers of state and local reviews provide an in-depth scrutiny of a project to determine its fulfillment of the extensive public access requirements. The application to the Marina Reconstruction Projects on Commercial Wharf reveals several disadvantages of the public review, such as the financial burden imposed on the developer by the lengthy process and a lack of implementation strategies in realizing public access.

The two case studies and their application suggest the need for: (1) minimizing delay in granting permits; (2) establishing enforceable implementation programs; (3) creating cost-effective method to promote public access at a time of limited resources; and (4) setting up non-regulatory measures to resolve conflicting interests for shoreline development.

Thesis Supervisor: Gary Hack
Title : Professor of Urban Design

Acknowledgment

I wish to thank my thesis supervisor, Gary Hack and my reader, John deMonchaux for their valuable assistance and interest.

I am indebted to those individuals who gave time to be interviewed and provided valuable information. In particular, I wish to thank Nancy Royal and Jim Sandell, and staff members at the BRA, Homer Russell, Natharie Beauvais, and Thomas Maistros. I also thank Mary Christie for her editorial assistance.

Also, I would like to thank all of my friends for constant encouragement throughout my study at MIT.

Finally, I would like to dedicate this work to my wonderful husband, Ken.

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Introduction

The thin margin where land meets sea has been a valuable resource to people for years. Human settlements have often been dictated by their proximity to rivers, lakes, and oceans. Until the turn of the 20th century, free access to navigable waters and the foreshore had been taken for granted. The people's right to the shoreline has its legal basis in the Public Trust Doctrine, whose roots go back to Roman times. It was codified, "By natural law itself these things are the common property of all : air, running water, the sea, and with it the shores of the sea." A similar right was guaranteed to Englishmen in the Magna Carta, and this tradition was continued in the United States.

Beginning at the turn of the 20th century, public access came to be limited in the face of growth in rural coastal areas. Property owners became increasingly restrictive against public access across their properties. In 1955, the National Park Service published a report entitled "Our Vanishing Shoreline," which examined 3700 miles of coastline between Maine and Mexico and concluded that 85 percent of this coastal area was closed to the public due to existing or proposed private development (pp. 27-34). People began to realize the importance of preservation of the coast for use by the general public so that all people might enjoy this beautiful resource, rather than just those who could afford real estate on the coast.

On the urban waterfront, a surge of interest in the public access issue is a relatively recent phenomenon. Historically, cities developed adjacent to waterways due to the availability of water for transportation, industrial production, water supply, and power production. In the boom of urban renewal, the waterfront has been rediscovered for its investment opportunities. In addition, many early waterfront developments, such as exclusive condominiums or luxury hotels, have faced increasing criticism for their lack of sensitivity to the needs of the general public. Improvements in water quality due to public investments in pollution control have enhanced the potential for recreational use of the waterfront, and have further heightened citizens' demands to have direct access to the shoreline.

Leadership with regard to the entire public access arena has come mainly from the West Coast, California in particular. It was initiated by the "Save the San Francisco Bay" movement in the 1960's, which created a powerful regulatory and planning agency, the San Francisco Bay Conservation and Development Commission. This movement expanded to the entire California Coast, leading to the comprehensive coastal management program. Since its inception, the California Coastal Program has drawn nation-wide attention to its uniqueness in organizational structure, extensive management plan, public participation, and planning and permit process. Public access is one of the major goals set forth in the California Coastal Plan.

At the local level, among several municipalities incorporating public access elements into their coastal management, Boston has created "The Harborpark Plan," a comprehensive program for the development and revitalization of Boston's waterfront. It began in 1990 after an interim planning period of several years. A project permit process and requirements were partly modified as a result of regulatory changes at the state level, the 1979 Supreme Court decision on the ownership boundaries of private tidelands, followed by the 1983 amendment to the State's General Law Chapter 91. These events have reestablished a legal basis for the public's right to waterfront access, requiring public access provision to be incorporated into waterfront development proposals.

In my thesis, I will examine how the government intervenes in shoreline development in order to create public access. I have chosen California and Boston as my case studies. Although they are different levels of government, both of them have a comprehensive plan with public access elements incorporated extensively. They also have a program and a set of design standards and guidelines specifically concerning public access issues.

This thesis is organized as follows. Chapter 1 begins with a brief outline of the history of public access in shoreline development, with emphasis on a change in people's perception of public access in the context of the growth in rural coastal areas and of the resurgence of urban waterfronts. Based on a review of the literature, I will present definitions of various kinds of access and some of the barriers that limit or discourage public access, and how they can be overcome.

Chapter 2 outlines the California Coastal Program through a review of the historical background of public access to the California Coast and the establishment of the California Coastal Commission and Coastal Conservancy. These coastal agencies have been playing a vital role in planning and implementing the California Coastal Plan. After the plan and public access elements it incorporates are summarized, a coastal access program undertaken by the state coastal agencies is presented. The collaboration of a regulatory agency and a project implementation agency represents one model of government intervention in creating public access.

Chapter 3 illustrates how public access was created at the Sea Ranch, a second-home community in Northern California. The Sea Ranch case is described in terms of its history of development and the intervention of the California Coastal Commission. The interactive effect of development and regulation is also discussed.

Chapter 4 describes the Boston Harborpark Plan. As in Chapter 2, the historical background of public access to Boston's waterfront, and the Harborpark plan and public access elements it incorporates are summarized, along with changes in the legal basis for public access at the state level. The layers of state and local review process are discussed as another model of government intervention in creating waterfront access.

Chapter 5 looks at a marina reconstruction project on Commercial Wharf, located in the downtown waterfront. I will explore how the public review process was applied to the marina reconstruction project, especially looking at various concerns raised in the review process and how they were resolved. I will also touch upon unresolved issues in this project.

In the final chapter, a brief summary of the lessons learned from the California and Boston case studies is provided. These lessons lead to general recommendations, including measures to mitigate costly delays imposed on the waterfront development by the public review process, the need for enforceable implementation strategies and an organizational structure for implementation of public access, the ways in which governments create public access with limited resources, and the need for mediation and negotiation in resolving issues over public access.

Chapter 1 : Public Access in the Changing Context

1.0 Introduction

The public's right to shoreline access had been guaranteed and taken for granted for a long time. It has been for some reason undermined in the face of growth in rural coastal areas and a decline in downtown waterfronts. More recently, the notion of public access has re-surfaced. The evolution of public access to the shoreline depends on location, history, use, topography, and other factors. However, there is a common history that rural coasts or urban waterfronts traced, and it is useful to understand why public access has become so important in today's shoreline development.

The following section outlines the evolution of public access in the changing context of rural coasts and urban waterfronts. In order to set up common ground for discussion of public access in case studies and applications, the definitions of "public access" are presented. My definitions are based on previous work done by Breen and Rigby on working waterfronts (1985, Summer), and by Kloster on public access to the urban waterfront (1987). I will present four kinds of access and discuss examples for each access category as well as how governments can intervene in order to create each type of access.

1.1 Evolution of Public Access

1.1.1 Rural Coasts

The demand for recreational opportunities has been increasing rapidly in response to increases in population, disposable income, leisure time, and mobility (National Research Council, 1980, pp. 9-11), particularly after World War II. People in ever greater numbers turn to the sea for multiple reasons. Active recreation, such as swimming, fishing, and boating, is complemented by more passive forms, such as strolling along the water or gazing at it.

Despite the increasing public need for beach access, there has been a growing trend of coastal property owners restricting informal beach access across their property. This causes conflicts in coastal communities where beach access was taken for granted by local residents. Rapid growth and soaring beach-front property values make private beaches more desirable and induce owners to post “No Trespassing” signs frequently. In most cases, the public beach may not easily accommodate growing demand.

The increasing need for coastal recreational areas and the privatization of shorefront properties have had a compounded effect on the shortage of public access to coastal land. The shortage of public access takes several forms. The demand for an attractive beach near population centers is likely to exceed the supply. The crowded beaches prompt people to drive to other beaches. This results in traffic congestion along rural coasts during peak use periods. In addition, parking is in short supply and parking fees, like waterfront property prices, have risen dramatically in recent years. As the demand for shoreline recreation has grown, the supply of space available for public use has dwindled. Due to the escalating prices for beach-front property, it is increasingly difficult for local governments to acquire it for public use. This is further compounded by local fiscal austerity. More cities and towns have been forced to seek cost-effective alternatives to purchasing shoreline property on the open market.

1.1.2 The Urban Waterfront

The evolution of the need for public access to urban waterfront land has traced a different path from that of the rural coasts. Until the turn of the 20th century, public access to downtown waterfronts in the United States was taken for granted, as waterfronts were the center of activity. The waterfront areas of the port cities were traditionally devoted to transportation because these areas were convenient locations for break-in-bulk and served large areas of the hinterland. With the harnessing of steam power, industries needed water and cheap and convenient dumping grounds for their waste products. As a result, waterfronts also became a prime location for industry. The arrival of the railroads demanded even more space adjacent to the waterfront, dividing the city center and the waterfront.

As containerization revolutionized cargo loading, many of the break-bulk finger piers fell into disuse and disrepair. Then, trucking became competitive with rail transport and industries that were not water-dependent moved to open land outside the cities where they were better served by the highway system. Hit by the decline of manufacturing plants, railroad yards on the waterfront were allowed to deteriorate. The waterfront became virtually deserted and inaccessible. In addition, highways were constructed on the cheaper waterfront land, which again separated the city center and the waterfront. As a result, many urban waterfronts were abandoned and public access was neither encouraged nor desired.

Once the old port area lost its original usefulness, private developers and city governments discovered a relatively inexpensive supply of downtown waterfront land for redevelopment. Due to the port's commercial failure, there was a chance to open the waterfront once more to the public through recreational, residential, and commercial uses. The Bicentennial's Tall Ship celebrations focused national attention on urban waterfronts and drew millions of people to long-forgotten shorelines. Parks, plazas, and promenades were beginning to grace the once abandoned, derelict waterfronts. People were becoming more aware of the delights to be found at the water's edge, creating a momentum for increasing access opportunities. Waterfront lands in many cities have been revitalized in the past decade into exclusive residential developments, retail market-places, boat marinas, or mixed use developments containing hotels and offices.

Cities in the United States originally welcomed these developments, since the reuse of abandoned land provided desperately needed tax revenues, as well as aesthetic benefits. However, many early waterfront developments, such as exclusive condominiums or luxury hotels have faced increasing criticism for their lack of sensitivity to the needs of the general public. In addition, improvements in water quality due to public investments in pollution control have enhanced the potential for recreational use of urban waterfronts, which have further heightened citizens' demand to have direct access to the shoreline.

1.2 Definition of Public Access

In their discussion of how to open a working waterfront to the public, Breen and Rigby defined three kinds of access: physical, visual, and interpretive access (1985, p.53). Physical access enables people to reach the shoreline and use the water by gaining direct access on or near the site. Pathways, parks, or street-end improvements are categorized in this type, as well as marinas, boat ramps, fishing piers, restaurants and bars. They define visual access as an ability to see the waterfront and categorize observation decks, towers, and overlooks. They view interpretive access as seeking to inform people about the working waterfront through the use of public education projects, such as signs, exhibits, brochures, lectures, films, books, and tours.

Kloster applies these categories to urban waterfront in general, with some modification (1987, pp. 15-24). She extends the definition of visual access by adding visual links and corridors between the water and the surrounding area. This can enhance a pedestrian's experience of the water's edge or allow for a view of water by a motorist on a shoreline drive. Kloster defines interpretive access as that which enables people to understand, appreciate, and enjoy what is happening along the waterfront, not only in a working waterfront but also one with rich historical resources, such as Boston's waterfront. She introduces a category, psychological access, which can encompass all three previously mentioned categories of physical, visual, and interpretive access. The concept of psychological access is that "people may not use the waterfront on a regular basis, but they should feel that they could do so whenever they wish and feel comfortable to do so."

These four categories are equally applied to the rural coast. Since rural coastal areas offer more active recreational opportunities than urban waterfronts, physical access is a prerequisite condition for people to enjoy these opportunities. However, in some areas, care must be taken to balance recreational use with a fragile coastal ecosystem. I would like to call their third category "informational access" instead of "interpretive access." Learning from the operation of a working waterfront or historical heritage in urban waterfronts, as well as from natural resources offered in rural coasts, allows people to enjoy various kinds of information generated therein. I also include in this category

informing people of the existence of the water and access to it and encouraging people to use it.

Psychological access can be achieved if physical, visual, and informational barriers are overcome. For example, physical barriers include natural topography and deteriorated waterfront structures that do not allow people access to the water's edge. These barriers may not be totally removed. Nonetheless, there are ways in which these barriers could be overcome or improved to some extent, for instance, creating an access trail where the topography could accommodate access or improving structures that offer safe access to the water's edge. Visual barriers could be prevented through height and/or bulk restrictions in waterfront developments. Installing signs and information boards, as well as prohibiting "no trespassing" signs, are the ways to overcome informational barriers.

I would add a socio-economic aspect to psychological access. Shoreline access and use should be enjoyed by people of varied income, diverse social status, cultural background, and various age groups. In urban waterfronts, a wide variety of retail, public, and marine-related uses not only facilitate pedestrian movement but also avoid creating exclusiveness. Although there is a question of how feasible it is to require affordable housing on a prime shorefront location, it might be one way to avoid the shorefront properties becoming ghettos for the rich.

Chapter 2 : Case Study : The California Coast

2.0 Introduction

The origin of the California Coastal Program can be traced back to the “Save the Coast” movement initiated by citizen groups who had been concerned about the uncontrolled development along the coast since the 1950’s. This movement resulted in the passage of the coastal bill, known as Proposition 20, which established a powerful coastal agency, the State Coastal Commission. While regulating virtually all the new development in the coastal area, the commission created a comprehensive plan, the California Coastal Plan. Adopted in 1976, the plan provides an extensive discussion of recommended policies and implementation programs on major elements concerning coastal conservation and development, including public access.

The following section presents the historical background of public access on the California Coast. The establishment of coastal agencies, the California Coastal Commission and Coastal Conservancy, through the legislative effort in the 1970’s is outlined. Then, the California Coastal Plan is described in terms of its planning process, the content of the plan, public access elements incorporated in the plan, and design guidelines and standards regarding public access. The role of state coastal agencies in creating public access is discussed with emphasis on their collaborative efforts through the Joint Coastal Access Program.

2.1 Historical Background of California’s Coastal Access

In the 1950’s, California, in the middle of its second great land rush, began to experience explosive growth. The rapidly growing population of the state increased demands on the coastal area for development. As a result, the coastal area was being drastically changed and impacted by growth. More than half of the state’s original wetlands and estuaries had been destroyed, and discharges of sewage and industrial effluents threatened water quality. High-rise buildings were replacing smaller structures, and

farmlands were being converted to other uses. Formerly unobstructed access across private lands to the water was being blocked by signs, fences, and buildings.

These private developments along the coast were guided mostly by real estate market forces, without any growth control by the planning efforts of local or state governments. Local governments were more concerned about the tax revenues generated by coastal development than they were about the protection of scenic areas, marine resources, and public access to the sea. Rather, they encouraged new growth.

In the 1950's, a few marine scientists and early environmentalists had worried about how California's explosive growth was changing the coastal ecology. By 1960, many Californians were dissatisfied with the decades of local and state governments' inability to regulate coastal development. Concerned about the steady degradation of the coastline, the citizens of California brought the concept of comprehensive coastal planning to the legislators. The citizens were inspired by the success of the San Francisco Bay Conservation and Development Commission (SFBCDC), which had been established in 1965 by the legislature and has been regulating excessive development in the Bay since then. This was the nation's first attempt at comprehensive coastal management.

There was a growing concern among the general public that private coastal development would eventually impair public access to much of California's 1100 mile long shoreline, as house after house walled off the beach for private use. In 1968, a group of Northern California environmentalists based in the Santa Rosa area formed Citizens Organized to Acquire Access to State Tidelands (COAAST). They placed an initiative on the Sonoma County ballot to create a countywide system of coastal accessways. Although the initiative was defeated, the group pressed its concerns on the State Legislature.

The legislative efforts were not successful until 1971, when the Dunlap Act was passed. This act mandated that all coastal jurisdictions require coastal access as a condition for zoning or rezoning land for residential use. By then, COAAST found a common ground with other environmental groups, such as Get Oil Out (GOO) in Santa Barbara and local chapters of the Audubon Society and the Sierra Club. These associations led to the creation of an active statewide lobbying group called the Coastal Alliance. The thin

stream of concern about the natural environment was joined by a much broader interest in land use issues: growth control, view protection, beach access, power-plant siting. In 1972, after the legislature had failed for three successive years to pass a coastal bill, the coalition finally tried the ballot initiative. In November 1972, Californians voted in favor of Proposition 20 and launched the comprehensive coastal program.

2.2 Establishment of the State Coastal Agencies

2.2.1 Coastal Act of 1972 (Proposition 20)

In the Coastal Act of 1972, known as citizen initiative, Proposition 20, the people of California declared, "The permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the State and region,..... It is the policy of the State to preserve, protect, and where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations."

The state coastal program, initiated by the act, took the successful 1965 - 1969 efforts in the state legislature to establish the SFBCDC as the coastal management prototype, including a citizen advocacy, coastal laws, a state coastal agency, and a comprehensive coastal plan. The SFBCDC was created as a single-purpose agency that would prepare a conservation and development plan for San Francisco Bay to be submitted to the legislature. While the plan was being prepared, development along the shoreline of the Bay could proceed only if it received a permit from this commission. When the San Francisco Bay Plan was finished in 1969, the legislature accepted it with only a few amendments, then gave the SFBCDC permanent permit power to implement its own plan. The California Coastal Commission was established with the hope that it would have the same function as the SFBCDC for the entire California Coast.

The act created a statewide commission and six temporary regional commissions. The state commission was composed of one representative from each regional commission and six members of the public; the Governor, the Speaker of the Assembly, and the Senate Rules Committee each appointed two of the public members. The six Regional

Commissions are : North, North Central, Central, South Central, South, and San Diego (Fig. 2.1). Each regional commission was composed of six locally elected officials (a city council member and a supervisor from each coastal county) and six public members appointed by the Governor, the Speaker, and the Senate.

By the 1972 Coastal Act, the Coastal Commissions were directed to prepare a “comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone.” The “coastal zone” (Fig. 2.2) was specified in the act as follows:

... that land and water area of the State of California from the border of the State of Oregon to the border of the Republic of Mexico, extending seaward to the outer limit of the State jurisdiction, including all islands within the jurisdiction of the State, and extending inland to the highest elevation of the nearest coastal mountain range, except that in Los Angeles, Orange, and San Diego Counties, the inland boundary of the coastal zone shall be the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line, whichever is the shorter distance.

During the planning period, the Commissions were to regulate development in coastal waters and in a 1,000-yard shoreline permit area to ensure that inappropriate development did not undercut the plan being prepared. For the succeeding four years, the Coastal Commissions acted on 6,000 development permits each year, while simultaneously preparing a plan for the long-term management of the coast (Fischer, 1985, p.315).

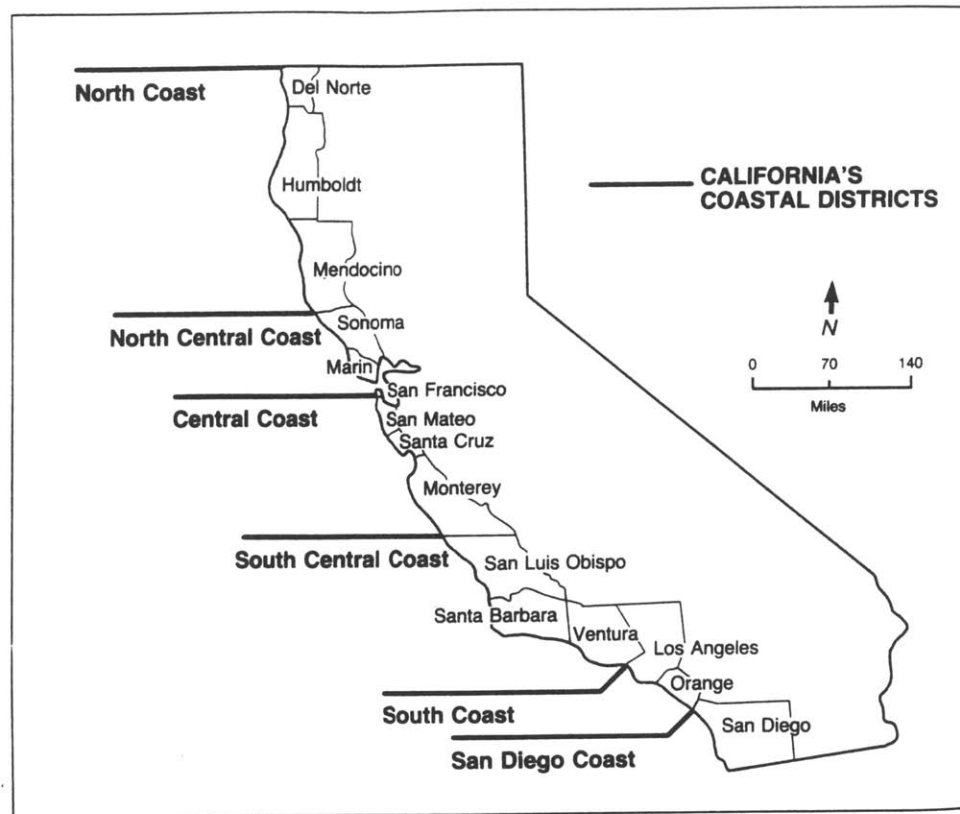


Fig. 2.1 California's Coastal Districts

Parts of the Coastal Zone

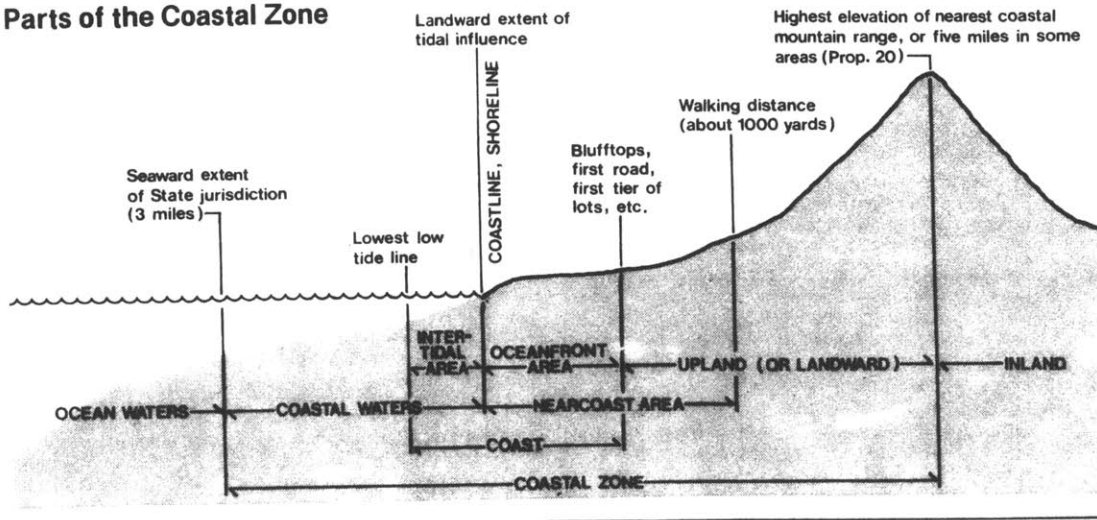


Fig. 2.2 Parts of the Coastal Zone

2.2.2 Coastal Act of 1976

At the end of 1975, the Coastal Plan was presented to the legislature. The plan's major policies, evolved from experience with the issues raised through planning and permitting process, were transformed into bills for the 1976 legislature. The policies and objectives set forth in a new Coastal Act of 1976 include: public access to and along the shoreline was to be maximized; agricultural lands were to be protected; sprawl was to be avoided; scenic areas were to be preserved. The California Coastal Act of 1976 was approved and created a new state-local partnership for coastal protection, with the coastal commissions reviewing and certifying local plans and ordinances for their conformity to the state coastal policies.

These policies were to guide each city and county in preparing its own local coastal program (LCP) for the portion of its jurisdiction that lay within the state's coastal zone. Each LCP would consist of two parts: the land use plan and its local implementation program including zoning, architectural review, and subdivision ordinances. Until an LCP was certified as fully meeting the requirements of the Act, the commission was to retain full jurisdiction to grant or deny permits. Once the LCP was certified, coastal permit authority would be returned to the local jurisdiction. Thus, the 1976 Coastal Act called for a distinct shift from case-by-case permit review to reliance on policy standards. Moreover, the 1976 Coastal Act created a permanent state commission that would hear citizens' appeals of local action on certain projects and oversee periodic revisions to the LCP's. The regional commissions were to cease to exist in 1979, by which time all the LCP's were expected to be certified.

Since its inception in 1972, the Commissioners and staff members processed thousands of permit applications. They also were confronted with dozens of lawsuits claiming vested rights to develop without permits. After the Commission's review, the project was either denied, approved, or conditionally approved. The Commission's permitting activities tended to be seen as negative because it had to wait for other parties' action for review and could not take a positive step toward coastal development and conservation (Fischer, 1985, p. 318). The Commission's experience had demonstrated that if the coast was to be "saved," more than regulatory means were needed (Grenell, 1994, p. 36).

Initially the Commission itself considered adding development and/or restoration capabilities to its own charter. However, for a regulatory agency to undertake the same kinds of activities that it could prevent others from doing, might generate a double standard. In order to avoid co-mingling regulatory and non-regulatory functions, the State Coastal Conservancy was established in 1976 separately from the Coastal Commission (Grenell, 1988, p. 19).

The Conservancy has a seven member Board of Directors, consisting of: Secretary of Resources, Director of Finance, Chairman of California Coastal Commission, and four public members, of whom two are appointed by the Governor, and one each by the President Pro Tem of the Senate and the Speaker of the Assembly. Six members of the Legislature, three from each house, provide legislative oversight. The Conservancy's Board chairman is appointed by the Secretary of Resources. The Conservancy has its own staff with diverse expertise, working on the virtual operation and project of the agency.

The Conservancy has a wide range of capabilities. It can buy land, restore or re-subdivide it, improve or develop it, own and manage it indefinitely, or sell or transfer it to others, either public or private parties. Working with government agencies, including the Coastal Commission, nonprofit organizations, citizens' groups, and landowners, it has intended to resolve many of the major coastal land use issues identified in the 1975 Coastal Plan. The conservancy's funds predominantly come from general obligation bonds. Other funding sources include profits on its transactions, grants from the commission, statewide bond issues, fines and settlement amounts established by the courts for violations of the Coastal Act of 1976, and in-lieu mitigation payments required by the Coastal Commission as conditions of development. The Conservancy has been perceived to be more efficient and productive than conventional bureaucratic control procedures, and has proved the extent to which these procedures can be streamlined or eliminated without loss of legitimate public oversight (Grenell, 1988, p.19).

The Coastal Commission and Conservancy have been working together in implementing the Coastal Plan. The Commission regulates development in the coastal zone while checking the conformity of the LCP's with the statewide policies. In contrast, the

Conservancy uses a non-regulatory, project-base approach to resolve conflicts that occur when demands on coastal resources collide. The Conservancy also provides varied financial and technical aid to local governments in carrying out their LCP's. One of the contributions of this collaborative work has been a coastal access program described later.

2.3 California Coastal Plan

2.3.1 Planning Process

During the early months of 1973, the state and regional commissions cooperated in setting up a planning process in which the plan would be developed in a series of elements, such as recreation, marine environment, etc., which covered all those required by the Coastal Act of 1972. Each regional commission was supposed to deal with the same element at the same time, maximizing press coverage and allowing the public to understand the issues being discussed (Healy & Rosenberg, 1979, pp. 106-111). This also made it easy to see whether the overall planning program was keeping up with its schedule.

For each element, the same adoption process was repeated. First, the state commission staff drew up a detailed background paper¹, containing an analysis of the problem and tentative policy recommendations. These were sent to the regional commissions, which held public hearings and workshops. Each region made its recommendations on each element of the plan to the state commission, which then adopted a composite of the six sets of recommendations and resolved any conflicts among recommendations. Hundreds of public meetings and hearings were held at the local, regional, and state level. New ideas brought up in one region were shared among all the regions for maximum exposure and debate.

Early in 1975, a preliminary plan was completed from adopted plan elements, together with a map and explanatory text in which each regional commission illustrated how the

¹ The basic background research for each element was done centrally by the State Commission staff to save time and money from otherwise duplicate efforts and to assure that virtually all ideas would get exposure in each region (California Coastal Commission, 1975, p. 430).

statewide policies would apply to the specific coastal areas in each region. Nineteen public hearings and countless informal meetings resulted in a final plan, and the regional maps and texts were reviewed for their consistency with statewide policies, and thereupon approved by the state commission.

During the planning period, the seven commissions had another major responsibility given them by the 1972 Coastal Act, regulating virtually all development within the coastal zone, 1000 yards of the ocean, to forestall any developments that might conflict with the plan while it was being prepared. This interim permit process was certainly an effective educational tool for staff, for commissioners, and for the public as well (Healy, 1978, pp. 79-82). Many practical lessons from the permit experience entered into the evolving plan, giving the Commissioner full knowledge of the practical problems of making coastal development compatible with protecting coastal resources. The permit process did increase public involvement, particularly of neighborhood groups affected by coastal development. The benefit of combining planning and issuing permits was also that it would build interest and consensus among the public.

2.3.2 Plan Summary

The area that is the subject of the plan policies is designated as "Coastal Resource Management Area" (CRMA), for which local governments are to bring their general plans, ordinances, and other programs into conformity with the Coastal Plan. It includes those areas within the coastal zone, as defined in the 1972 Coastal Act, containing significant coastal resources such as the coastal waters, wetlands, estuaries, beaches, bluffs, wildlife habitat areas, agricultural lands, and coastal communities and neighborhoods. In some cities, the CRMA is narrower than the 1,000 yard permit area established in the 1972 Coastal Act. In rural areas and other areas of undeveloped land, the CRMA may extend to the inland boundary of the coastal zone as defined in the act.

The basic goals for conservation and development in the coastal zone are:

- to protect, enhance, and restore the natural resources of the coast;

- to protect, enhance, and restore the manmade resources of the coast - the special communities and neighborhoods that have unique cultural, historic and aesthetic qualities;
- to give priority to coastal-dependent development - use of land and water that by their very nature require coastal sites - over other development on the coast;
- to maximize access to the coast for people of all income ranges, consistent with the protection of coastal resources;
- to encourage orderly, balanced development that avoids wasteful sprawl by concentrating new growth in already developed areas with adequate public services or in other areas near major employment centers consistent with resource protection policies.

The plan's 162 policy recommendations form the framework of a management program concerned with both natural and manmade coastal resources. The plan designates 10 major elements: Coastal Waters, Coastal Land, Coastal Appearance and Design, Coastal Development, Energy, Transportation, Public Access to the Coast, Recreation, Scientific and Educational Resources, and Restoration. For each element, major findings and policy recommendations are summarized. The plan includes the recommended implementation program, with both local and State responsibilities as well as costs and possible sources of funds.

The plan requires local governments to prepare their Local Coastal Plan to bring their land use plans and regulatory ordinances in line with coastal policies within three years. Compliance would be enforced by having the local plans reviewed and certified by both state and regional coastal commissions. Until local plans had been certified, the interim permit process specified in the 1972 Coastal Act, would remain in effect with the following modification :

- the standards for issuing and denying permits would be in compliance with the Coastal Plan, not the 1972 Coastal Act
- permits would also be required within the CRMA for the conversion of any prime agricultural land to other uses and the conversion of other agricultural land in parcels of 20 acres or more
- anywhere within the coastal zone, a commission permit would be required for major water, sewer, transportation, or energy developments that could adversely affect coastal resources
- permits would not be required where a Regional Commission (or the State Commission, on appeal) determined after public hearing that development of a particular type or in a particular area would not adversely affect coastal resources.

In addition to the general policies, the plan contained more than 200 pages of geographically specific discussions of problems and policies. The plan specifically applies the policies to the geography of the coast, describing it in both narrative and graphic form. Maps presented in the plan identified areas of special resource value, although they do not indicate zoning or intensity of use.

2.3.3 Public Access Elements in the Plan

The plan rephrases a part of the State Constitution, adopted in 1879, which guarantees the right of public use of the coast :

The people shall always have access to navigable waters. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof.

The plan claims that a right of public access to the ocean has not always been enforced; many parts of the coast have been fenced off from the public or otherwise inaccessible. The plan proposes that existing legal rights of public access to the coast be enforced. Thus, the provision of maximum amounts of oceanfront area for public use and enjoyment is one of the major long-term goals set forth in the plan, with emphasis on the need of access to the coast for persons of all income levels, all ages, and all social groups. There are two elements that specifically address the public access issues. "Public Access to the Coast" deals mainly with physical access, whereas "Coastal Appearance and Design" addresses visual access.

Public Access to the Coast

New developments along the coast are required to provide reasonable public access. In developments where the provision of a public accessway is determined to be inappropriate, the project sponsor is to pay "in lieu" fees to a fund for the acquisition, maintenance, and operation of public access at a suitable location elsewhere. A state

agency is authorized to have responsibility to acquire and maintain accessways, including the power of eminent domain. The plan provide that public accessways should not be opened for public use until a public agency or private association agrees to accept responsibility for maintenance and liability for the accessways.

The general public's use of an area may be closed or limited by the government agency managing the area, upon concurrence of the coastal agency. There are some conditions where public access is inappropriate. For instance, where it is necessary to prevent deterioration of natural resources, public safety or military security precludes public use, and the public accessway would adversely affect agricultural uses. Nevertheless, the plan insists that the legal right of public access shall not be surrendered, and areas closed to general access shall be reopened as soon as the condition can be resolved.

The plan addresses the issue of equity concerning public access. Due to the rapidly increasing value of coastal property, people of limited means, including many elderly people, can no longer afford to live in some coastal neighborhoods. Coastal development should be accessible to people of diverse incomes and ages. Housing for persons of low and moderate income should be adequately provided to increase access for all people to the coast through retaining existing low- and moderate-income housing and providing new housing. Condominium conversion of older residences should be regulated.

The Coastal Plan gives a unique interpretation of the issue of public access versus property right. The plan put it :

The issue is not whether property owners' rights could be violated; rather, property owners' expectations may be affected. When people buy land, they often expect greater financial return compared to other investments. They may live on their land or farm it ; they pay property taxes on it ; they may expect to make money by holding it due to the recent rapid rise in land values in many areas. They believe they deserve to be compensated if their expectations are not realized. Under the Coastal Plan, as under many Constitutional land use laws, people can use their land in a variety of ways, but in some cases not as fully or intensively as they might like. Just as the California Constitution protects rights of private property rights, so it also protects rights of public access. The Plan would not take any private property for public use, but rather seeks to protect existing public rights of access to the ocean and other navigable waters.

The plan protects property owners against the taking of their property without just compensation. The plan proposes that some key coastal properties be bought by the public for public use or environmental protection; the owners of such property would be paid fair market value for their holdings. The plan proposes that new buildings would be designed to minimize interference with ocean views from public roads, and to provide public access to the oceanfront where appropriate.

Coastal Appearance and Design

In order to protect and enhance the California coastline as a visual resource of public importance, a large part of the "Coastal Appearance and Design" section is devoted to providing guidelines for various types of development in highly scenic areas and in areas affording the public prominent coastal views. The plan defines a "coastal viewshed" as "the coastal lands and waters that can be seen from the major coastal access roads, trails, and railroads (those paralleling the coast and those leading to the coast from inland areas); from public vista points and recreational areas; and from the water's edge." Within the coastal viewshed, new development should be designed so that the viewshed quality can be preserved, enhanced, and restored. The plan proposes that new development shall not be permitted to degrade highly scenic natural, historical, or open areas and shall be visually subordinate to the scenic quality of these areas.

The plan proposes the establishment of a design review process for new development that would have a significant visual impact within the coastal viewshed, to ensure that development and its cumulative impact are consistent with the design guidelines and with other Coastal Plan policies. For major new development, the project sponsors are required to prepare coordinated design plans which comply with the requirements of the design guidelines and other plan policies. The design plans should specify the general location of uses by height, bulk, and density, and that indicates the location or methods for preserving open space, ocean, views, and public access. The impact of any proposed major structures on views, shadows, glare, and wind patterns are required to be evaluated.

In addition to the guidelines, the plan proposes that development, including signs and billboards, utility structures such as power and communication lines and towers, and massive structures such as major industrial plants and shopping centers, should be sited to protect coastal views and minimize visual impact. These guidelines are referred to by the commission through its review process, except for the condition where a proposed development that would not comply precisely with the guidelines and policies in the plan, nonetheless, be visually compatible with the surrounding environment because of its innovative and sensitive design.

2.4 The Role of State Coastal Agencies in Creating Public Access

2.4.1 The Joint Coastal Access Program

The 1980 legislature set up the Joint Coastal Access Program (JCAP), authorizing the State Coastal Commission and Conservancy to plan and implement a statewide coastal access program (Commission & Conservancy, 1985, pp. 1-2). Since then, the agencies have been working with local governments, state agencies, private organizations, and individuals in designing, funding, and constructing coastal access facilities. The legislation required the agencies to issue annual reports in addition to the initial tasks, including the inventory of accessways and establishment of standards and design guidelines for access facilities.

The program was initiated with the inventory of all existing and “potential” access facilities. The former category included all publicly owned and/or operated beaches, shoreline parks, access paths, trails, bike paths, hostels, and other recreational facilities. “Potential” facilities were sites which were available because of the conditions on development permits that the Coastal Commission had required since 1973. The information was gathered from a review of approximately fifty thousand permit and appeal files and research on existing access facilities (Mikkelsen & Neuwirth, 1987, Public Beaches, p.11). The inventory and maps accompanying it first came out in June 1980 and subsequent editions have been published to keep current with accessway development.

The inventory revealed where access could be provided within each jurisdiction and developed a comprehensive strategy for funding facilities in coordination with opening new access easements. The inventory and the maps have been invaluable tools with which state agencies, local governments, and groups can analyze beach needs and opportunities for coastal access. The inventory was also critical to the program in order to identify who should have the responsibility of constructing and managing the accessway before it can be opened to the public.

2.4.2 Standards and Design Guidelines for the Coastal Access Program

As the 1980 legislative mandate, the coastal agencies adopted the Coastal Access Standards² as part of the JCAP. The Standards are applied to the actual rights-of-way designations, dedications, and easements on both public and private land. The Standards are a guide for the Commission's regulatory actions and the Conservancy's access grant programs. They are a benchmark for the Commission and Conservancy to ensure that a consistent approach is used to establish accessways.

The standards are divided in two parts. The former part, "General Standards," provides overall guidance for the location, size and nature of access rights-of-way along the California Coast. The latter part, "Definition, Specifications and Location Criteria for Accessways," describes the characteristics and provides guidance for the location and size of the following accessways and related facilities : lateral accessways, vertical accessways, upland trails, scenic overlooks, coastal bikeways, hostels, and support facilities including needs for the people with limited mobility.

The Design Guidelines evolved from many sources including other design manuals, the expertise of Commission and Conservancy staff members, and the experiences, both successful and unsuccessful, gained through development of coastal accessways. The Design Guidelines, provide dimensions, and specific design criteria for facilities such as stairways, trails, walkways, ramps, footbridges, boardwalks, and support facilities.

² See Appendix A : Selected standards for California Coastal Access.

The coastal standards and design guidelines were incorporated into a design manual entitled “Designing Accessways” in 1980, with case studies of selected access projects describing built facilities and their design details, costs and materials. It provides recommended dimensions, designs, and important criteria for construction and maintenance as well as knowledge and ideas gained from the experience in developing accessways. It also includes information about shoreline erosion, bluff and slope erosion, and vandalism, as they relate to the design of coastal access facilities, suggesting that preventative measures can be incorporated into the design of accessways to help minimize possible storm and vandal damage. A revised version of this manual is “Public Beaches : An Owners’ Manual,” published in 1987.

In addition to the design manual, the Coastal Commission and Conservancy has published annual reports, periodicals and newsletters about public access, coastal access handbooks, and more. These publications were prepared as a detailed reference source as well as an educational tool for local governments, private organizations, and individuals. They have helped provide information and guidance for planning and constructing the economical, imaginative, and practical public access facilities.

2.4.3 The Nollan Case

Among dozens of lawsuits the California Coastal Commission went through since its inception, the Nollan case is noteworthy not only because of its influence on California’s coastal management program, but also because it set a significant precedent for the land use planning cases thereafter (Natoli, 1988; Klein, 1990). This case sheds light on the questions of property rights and public access and how the Commission’s beach access policy fits or does not fit within the rules of property right guaranteed in the United States Constitution.

J. Patrick and Marilyn Nollan had been renting a bungalow on beach-front property in Ventura County, California. Along this stretch of beach, the Coastal Commission was working to establish public access between a park located one-quarter mile north of the property, and a public beach located one-third mile south. The Nollans acquired an option to buy the property, under the condition that they would demolish the bungalow

and construct a larger, two-story home. Required by the state law, they applied for a permit from the Commission. Since 1979, similar permits were routinely granted to the other neighbors of the Nollans, converting small rental cottages into larger, year-round dwellings. They had deeded an easement as public access across their property to the Coastal Commission, as a condition of being issued a building permit.

The Nollans, however, objected to such a condition, and challenged the Commission in court, saying that their land was being taken by the State without any just compensation, as guaranteed in the Fifth Amendment of the United States Constitution. The Coastal Commission argued that exacting the easements was a legitimate use of the “police power” to protect the public interest. The Commission contended that the easement requirement was necessary to ease public access along the beach which was being hindered due to the psychological barrier of increased density of development along the coast.

A California Court agreed with the Commission, and held that the conditions were “reasonably related” to state planning objectives. The Nollans appealed to the United States Supreme Court, which ruled in a five-four decision in favor of the Nollans, in June 1987. The Court virtually accused the Commission of having invented the loss of visual access and other losses as excuses to justify its real goal, creating a public walkway across private beach-front land (Natoli, 1988).

The majority opinion simply reiterates the standard rule that government cannot force private donations of public rights-of-way, except where in doing so a problem caused by the landowner-donor is being solved. Nonetheless, the majority indicates that if it can be shown that there is some relationship between a restriction government imposes on coastal landowners and an impact of their developmental activity, then the restriction will be upheld, and compensation will not be required.

According to Sax (1987), “the Supreme Court did little more than to reaffirm the standard rules of land law that have long governed the country, and to bring California back in line with mainstream legal doctrine....the Court has left open the possibility of a public right across the beach, based on grounds other than the dubious substitution of physical access for alleged loss of visual or psychological access.” However, after the

Nollan case, it has become increasingly difficult to acquire coastal properties for public access and use without payment. The JCAP's formula, acquire land, construct public access, and convey the management responsibility to other parties, is no longer efficient in creating public access.

2.4.4 Achievement and Current Issues

According to the Annual Report 1991-1992 by the Coastal Conservancy, it spent about \$175 million dollars from 1978 to 1990 on protecting and enhancing the state's coastal resources. About one-third of the agency's funds went to public access projects. By 1990, some 400 projects had been completed including 180 entirely new coastal accessways opened to the public and 30 accessways made accessible to wheelchair riders. It also had helped create low-cost hostels for coastal travelers.

The Coastal Conservancy designated the Summer 1995 issue of "Coast and Ocean," the agency's quarterly publication, as a special issue of reviewing its 20 years of experience in creating and improving public access along the California Coast. It describes its successful operation as follows:

Previously inaccessible beaches were opened to the public, many new pathways, cliff-top-to-beach stairways, and other shoreline improvements were built. About half the shoreline is now in public ownership, and aside from military bases and public utility properties, almost all of that is open to the public.

In the same issue, however, it is shown that progress toward "maximum access" began to slow down due to various factors. It began in 1978 when Proposition 13 passed, undermining the tax base of local governments by freezing property taxes. Then, in the 1980's, during the era of a staggering economy, came storms, fires, and earthquakes. Governments began to suffer from chronic budget shortages, which made it unable to repair the damage. Voters were refusing to pay more taxes, and they rejected bond measures, on which the access program had heavily relied. Even maintaining what then existed was increasingly difficult.

Available funding has steadily shrunk from the 1984 peak, accelerated by the termination of a voter-approved bond issue in 1988 (Grenell, 1994, pp. 40-41). This, together with the state's continuing deficit, has resulted in a severe shrinkage of available

funding for the Conservancy as well as other agencies. Due to increasing uncertainty about its financing in the near future, the conservancy inevitably has tightened its control over how much can be spent, and for what. Due to the lack of an adequate amount of funding, the agency's own project contributions have decreased quickly. Moreover, since 1988, new Conservancy funds have been allocated to specific purposes and projects for the most part, through the conventional budget process. This resulted in a significant reduction of the Conservancy's flexible operation and quick response, which is one of the agency's most vital characteristics. The fiscal austerity of the coastal agencies has been further compounded by the Nollan effect.

As tax bases diminish and costs keep rising, government agencies are forced to look for alternative funding sources, and payment for services is among the first options they choose. User fees are becoming increasingly common along the coast. In the past several years, the Coastal Commission has seen various proposals to raise beach parking fees or impose fees where none existed before. Because a Coastal Commission permit was required to install structures for collecting fees, public hearings were held. Many citizens argued that since the California Constitution guarantees public access to the shore, it was unfair and/or unconstitutional to impose fees for use of beaches. In response, the state Parks Department explained that while beach use was indeed free, the support facilities such as parking lots, restrooms, trash pickup, and accessways that the state provides have both initial and long-term maintenance costs.

The California Coastal Program, initiated by the citizen movement, has not been kept the public's attention as much as it used to. Fischer, the former California Coastal Commissioner and the current executive director of the Coastal Conservancy described the shift of people's interest as follows (1985, p. 321):

Public attendance at commission meetings has dwindled; civic associations and environmental and citizen groups give direct, immediate attention to coastal management only sporadically - a shadow of their formerly impressive, influential presence. Activist movements, too, like the environmental heyday of the 1970s, have their ebb and flow. Even though public opinion polls (1985) still indicate strong public support for coastal protection, the Coastal Commission gets very little direct, positive feedback. We now hear mostly complaints.

Chapter 3 : Case Application : The Sea Ranch

3.0 Introduction

The Sea Ranch is a second home community of approximately 2,700 units located 110 miles north of San Francisco, in Sonoma County, California (Fig. 3.1). It is famous for its environmentally-oriented architectural style and site planning. The Sea Ranch is one of the development projects in California which triggered citizens' movement to protect public access to the coast in the 1960's. This movement led to the passage of Proposition 20. The process of creating public access in Sea Ranch took more than a decade, making it one of the lengthiest projects in the history of the California Coastal Program.

The following section outlines a history of the development of the Sea Ranch. The process by which public access was created, from the citizens' movement in the 1960's through negotiation and litigation between the coastal agencies and the Sea Ranch developers and Home Owner Association, until the settlement in the 1980's, is described. The product of this lengthy process and its present conditions are presented. Finally, changes in the Sea Ranch design and development are examined with emphasis on the interactive effect of regulation and development.



Fig. 3.1 The Location of the Sea Ranch

3.1 History of the Sea Ranch Development

The Sea Ranch³ began in the early 1960's as a planned community of 5,200 second homes. Recognizing a unique feature of the site with a dramatic landscape and a strong sense of place, the developer, Oceanic Properties Inc. (Oceanic), committed to environmentally sensitive land development. It aimed to restore the natural landscape and to design a community that would preserve the natural character of the land through design excellence and land management.

In accord with the developer's vision for this project, Lawrence Halprin, a renowned landscape architect, contributed to the overall master plan for the Sea Ranch, including a specific plan for initial development of the southernmost 1,800 acres. The architectural firm MLTW (Charles Moore, Donlyn Lyndon, William Turnbull, and Richard Whitaker) created the unique Sea Ranch design with several early structures such as a condominium and a number of homes. The overall plan and architectural design were based on extensive ecological studies on soil, drainage, climate, wind, and vegetation. Condominium units and houses were clustered to preserve open space and views. The general density of development was established at one dwelling unit per acre. The remaining undeveloped land was to become a "commons," and open to all residents of the Sea Ranch.

The plan incorporated "The Sea Ranch Restrictions," a set of building design guidelines that requires all structures to blend into the natural setting and to minimize their visual as well as physical impact upon the landscape. These restrictions intended to generate buildings similar in size, scale, color, and material. The design of future houses would be entrusted to the Sea Ranch Design Committee to continue the character and style established by the design team.

A program of landscape restoration began soon after the Sea Ranch was purchased in 1963. In June 1964, Sonoma County approved the plan and rezoned the southernmost 1,800 acres of the entire site from "unclassified" to "planned community." The Sea Ranch's pioneering efforts at landscape preservation and

³ For a discussion of the design and development of the Sea Ranch, see: Moore, Allen & Lyndon, 1974; Burns, 1984; Canty et al., 1993; and Appendix B.

architectural design drew immediate attention in the American press and in architectural journals throughout the world. By the early 1970's, Oceanic had sold over 1,700 individual home sites and was on the verge of financial success.

Despite the early years of success, the Sea Ranch turned into a financial disaster, due to the weakening real estate market followed by a moratorium imposed by the Regional and State Coastal Commissions. The Sea Ranch development was forced to change its plan for the remaining 3,400 acres. Public access was one of the central issues which was dealt with during the lengthy process of negotiation and litigation through the final settlement by the state legislative development.

3.2 Process in Creating Public Access

As the Sea Ranch grew as a community of hundreds of homes, it met opposition from a local citizen group, California Organized to Acquire Access to State Tidelands (COAAST). COAAST challenged the Sea Ranch to provide more public access and questioned the serious impact that developing a community of 5,200 residences would have on the wildlife and native plants. Meanwhile, Oceanic was seeking approval from Sonoma County for the development of the northern 3,400 acres of the Sea Ranch. The pressure for coastal access resulted in negotiation between Sonoma County and Oceanic. In 1968, Oceanic obtained the approval in exchange for the dedication of 125 acres at the northern end of the Sea Ranch for a county park. In June of 1969, the dedication of the park, named "Gualala Point Park," was accepted by the Sonoma County.

Dissatisfied with this outcome, COAAST resorted to a Sonoma County ballot for acquiring beach access. This attempt failed due to the strong opposition from the Sea Ranch residents. Nevertheless, COAAST's continuous efforts led to a passage of the "Dunlap Bill," which required new coastal subdivisions to provide reasonable public access to tidelands. Furthermore, COAAST became a principal component of "Coastal Alliance," which was to be largely responsible for the passage of Proposition 20. During the campaign for Proposition 20, the Sea

Ranch became a symbol of “vanishing coast” that made many Northern California voters believe in the need for regulation.

Meanwhile, the North Central Commission (NCC) was established as required by Proposition 20. A great deal of opposition from concerned citizen groups forced NCC to grant a temporary moratorium on the issuance of permits. The moratorium forced Oceanic to file the first of many legal actions at the Sea Ranch, claiming that owners of lots that had obtained approval prior to the passage of Proposition 20 had a right to build homes and should be exempt from Commission review. Oceanic’s claim of exemption was not upheld by the court. Lot owners saw their dream of a house on the coast frustrated by the new law, and Oceanic saw profit turn to loss.

By 1973, NCC planners had devised a series of conditions to address the issues raised by development under the 1972 Coastal Act. The Commission then began approving permits subject to the new “overall conditions.” The main part of the overall conditions was the requirement for new public access, the creation of view easements, and limitations on the height, size, and bulk of buildings in scenic areas⁴. Access and view protection required lot owners to donate land owned in common with the Homeowners Association. Since individual lot owners were powerless to force the association to comply, they were unable to get permission to build their homes on their lot. At this point, the association sued in federal court, claiming that the imposition of overall conditions violated their constitutional rights.

The Sea Ranch access issues were brought to the State Coastal Commission. The Commission then faced a dilemma. Any decision the Commission made would have wide ranging effects throughout the coastal zone. The Commission was equally concerned about the situation of individual lot owners, caught between the Homeowners Association and the state, and powerless to comply with the overall conditions. The Commission eventually proposed a compromise. In May 1974, they approved permits with the same “overall conditions” but with an additional provision that would give lot owners the option of depositing a \$1,500 fee in lieu

⁴ The overall conditions included new standards for septic tanks and water supply facilities.

of complying with the conditions pertaining to land owned by the Homeowners Association. This deposit would be used to mitigate the effects of development if the association were unable or unwilling to comply with the conditions. This “in lieu” system was reluctantly accepted by applicants.

Meanwhile, the California Coastal Plan, adopted in the 1976 legislature, stated the opinion of the Commission regarding additional access to public tidelands at the Sea Ranch:

Additional access to public tidelands at the Sea Ranch is absolutely necessary to protect and preserve the public’s right to reach the shoreline. The beautiful Gualala Point Park, dedicated to the county by Oceanic, cannot be used as a reason to exclude the public from the remaining 10 miles of public tidelands at the Sea Ranch. In the 10 coastal miles of the Sea Ranch, the only public access is at the extreme northern end of the development along two trails 20 feet wide, adjacent to the park.

The new law, Coastal Act of 1976, strengthened the commissions’ mandate to provide and protect public access. New members were appointed to both the regional and state commissions. The Homeowners Association continued their lawsuit and remained unwilling to comply with the overall conditions. As a consequence, lot owners, although feeling unfairness, continued to pay the required deposits in order to build their homes. The new State Coastal Commission, seeing no meaningful progress towards resolving the issues at the Sea Ranch, again considered denial of applications while waiting for the completion of Sonoma County’s local coastal plan.

The complex and long-standing dispute over the Sea Ranch was virtually settled by the passage of an Assembly bill, called the “Bane Bill.” At the request of representatives of the Homeowners Association, Assemblyman Tom Bane set out to devise a program to settle the controversy once and for all. The bill offered a cash payment of \$500,000 to the Homeowners Association to settle the claims of parties at the Sea Ranch. In return, the association would convey easements for five public accessways and a bluff-top trail to the State Coastal Conservancy. Upon this conveyance, the construction of single-family homes on all vacant lots was thereafter exempted from further regulation under the Coastal Act of 1976. The bill also required the creation of easements to protect views and the establishment of guidelines for buildings in these areas. In June 1981, the Coastal

Conservancy transferred the access easements provided by the Bane Bill to Sonoma County to be developed and managed as a part of the County Regional Park System⁵.

Having difficulty with this compromise, the Homeowners Association and COAAST filed separate legal actions in opposition to the bill. Despite the difficulties, in July 1981, the association deposited the required documents in escrow, and the Conservancy deposited the \$500,000 settlement. Over the next fourteen months, the outstanding lawsuits were decided in favor of the Bane Bill. Five accessways, bluff-top trails, rest rooms and parking facilities were constructed through the Conservancy's fund of approximately 460,000 dollars(Conservancy, 1991, p.21). All the public access facilities were opened in 1987 and have been managed by Sonoma County.

Each of the five accessways consists of a trail-head, trail, and, where necessary, a stairway connecting to the beach (Fig. 3.2, 3.3). The trail-head provides a signed and gated entrance, parking for four to ten cars, rest rooms, trash receptacles, and an information kiosk displaying the appropriate rules and regulations as well as a map of the area. The trails leading to the shoreline are marked with unobtrusive posts at turning points and at junctions with private roads and paths. The longest trail is three quarters of a mile; the average length is just over one quarter mile. Small footbridges are provided to cross drainage ways. Trail-heads are located west of Highway 1 generally out of a driver's line of sight but are easily identified by state access signs.

⁵ After that, the Conservancy provided a grant of \$255,000 to the county to improve the easements for public use.



Fig. 3.2 Trail, Foot Bridge, and Signage in Sea Ranch

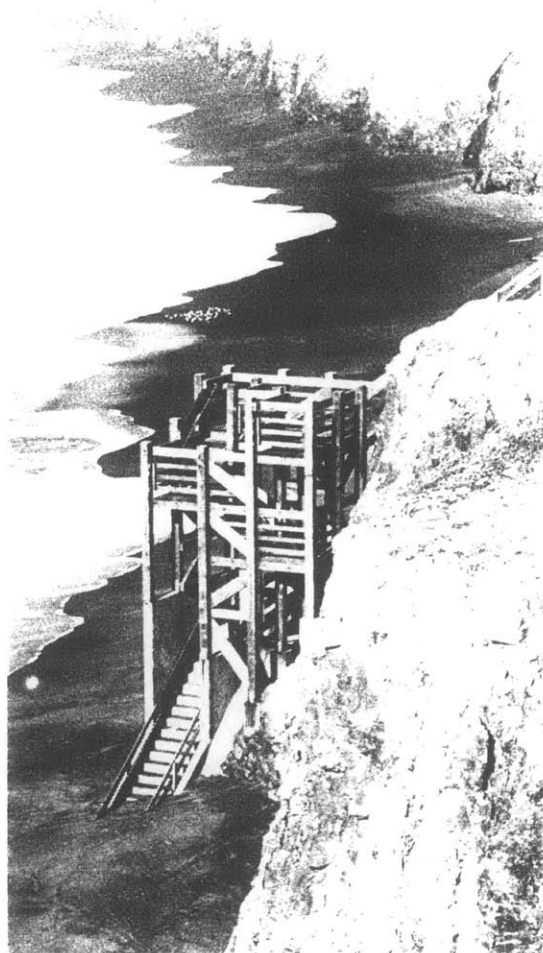


Fig. 3.3 Stairway in Sea Ranch

Because of the concern about management and the fact that most visitors would arrive after a three-and-a-half-hour drive from the Bay Area, each accessway was designed to be a complete, self-contained facility. Concern over appearance and durability led to careful, sturdy design and the use of highest-quality construction materials. The costs are correspondingly higher than in comparable areas. The accessway components are unobtrusive and consider the privacy of adjoining residences as much as possible. Trails are sited along the edge of meadow areas following drainage ways or within the hedgerows that separate subdivision units. According to the Conservancy's project catalogue in 1991, which reported the condition of existing public accessways as a part of inventory, the public accessways and facilities in Sea Ranch were reported "clean, controlled, patrolled and well-managed." My visit in the Summer of 1995 left me with exactly the same impression.

3.2 Interactive Effect of Development and Regulation

It should be noted that the concept of public access was incorporated in the Halprin's master plan, hoping to create a community of people of varied incomes who were nature-oriented. Halprin's site plan done from 1964 to 1966 reflects his intention of preserving visual and physical access to the coast (Fig. 3.4, 3.5). Houses were clustered against hedgerows leaving the meadows free to function as a commons. The roads serving the houses were to run in a straight line perpendicular to the shoreline and be attached to the hedgerows. House lots were not allowed to be located parallel to the shoreline in order to avoid view blockage by a wall of houses. The houses were kept away from the edge of the ocean bluff, thus providing an uninterrupted accessway as well as a visual easement along the full length of the Sea Ranch shore.

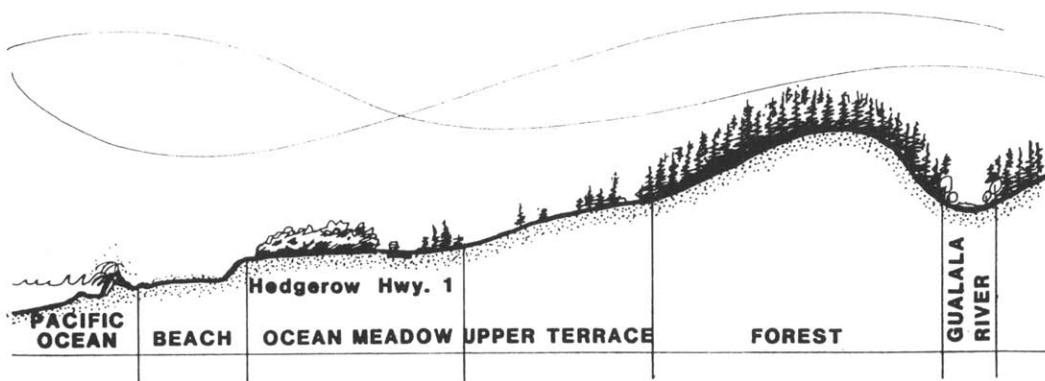


Fig. 3.4 Section of the Sea Ranch

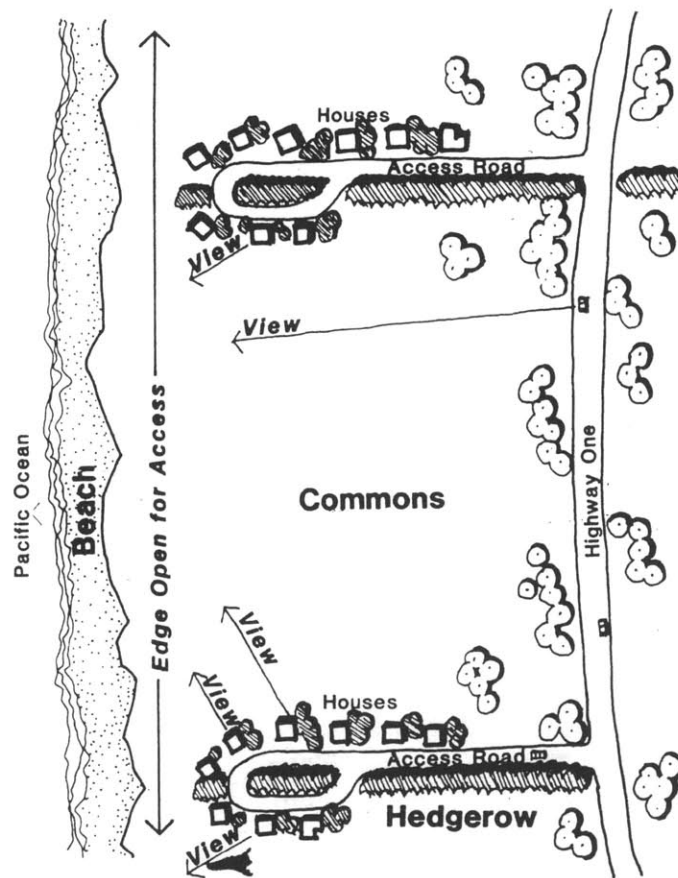


Fig. 3.5 Original Scheme of the Sea Ranch Site Plan by Halprin

Halprin planned several development units in the early stage from 1964 to 1966. From 1967 to 1970, site planning was done by Oceanic's in-house planning staff. Halprin's concept of protecting public access began to be lost. Some of the houses were located in the meadow between the hedgerows, intruding on common open space. In an effort to create lots with direct ocean views, roads and lots were sited parallel to the shoreline, placing a wall of houses along the coastline. Other houses were built close to the shoreline which violated the concept of keeping the shoreline clear of development as both a visual and access easement. This was, in fact, one of the reasons why the full-length bluff-top trail proposed by the Coastal Commission was never achieved (Taniguchi, 1985, p.151). The density of development during this period was slightly greater than the original units at the southern end of the Sea Ranch.

Since 1970, Oceanic hired outside consultants for site planning. The lots were angled toward the ocean in an attempt to gain ocean views for the property owners. The houses remain unattached to a hedgerow and stand out in the meadows. The greater density provides for a visually confusing mass of structures.

In the meantime, a wastewater treatment plant was installed. In other units of the Sea Ranch, wastewater disposal was through the use of septic systems so there were limitations on the density of development that could be served by individual systems without the threat of groundwater contamination. The installation of the treatment plant itself dictated a certain density of development for the plant to be economically feasible. The end of the access roads extending to the shoreline hook create more lots with ocean views. The result was a wall of houses which block views.

Some cite that the "building moratorium" created by the Coastal Commission required that there be higher densities to make up for the economic pressures caused by delays in the development of the Sea Ranch (Taniguchi, 1985, p.164). However, it must be noted that most of the lots were already in existence at the time of the enactment of the 1972 Coastal Act. Others cite economic problems as the reason for the loss of the original planning concepts (Taniguchi, 1985, p.164).

The housing recession and higher interest rates in 1970 made lot and home sales difficult. Pressed by economic problems, the developers pushed for higher densities. Furthermore, seeking an incentive for quick and easy sale, the developer created more lots with ocean view.

The greatest impact the Coastal Commission had on the Sea Ranch is believed to be reducing the number of units by about one-half from the original 5,200 proposed in 1964. More lots might have been created without the regulation by the Commission. However, as a matter of fact, it would have been difficult for Oceanic to develop that many units on the Sea Ranch without drastically increasing densities in areas proposed for development. The reduction of the scale of the development has proven to be appropriate considering that if 5,200 units were developed, there would be greater problems today with septic systems and other development impacts such as traffic.

Chapter 4 : Case Study : Boston's Waterfront

4.0 Introduction

After being neglected for years, Boston's waterfront was rediscovered for new development opportunities. In the 1960's, urban renewal helped to stimulate waterfront development and provided amenities including the Downtown Waterfront Park. The 1970's witnessed a trend to develop a more exclusive waterfront, with features such as luxury housing and office space, rather than to develop the waterfront for greater public use and enjoyment. The growing concern over diminishing public access to the waterfront, with a significant change in the state's waterway licensing regulations, set the stage for the creation of Boston's comprehensive waterfront plan, "Harborpark Plan." The plan was designed to produce a variety of public benefits; one of the most important elements is public access.

The following sections proceed by first presenting historical background and the legal basis concerning public access to Boston's waterfront. Then, Harborpark Plan is described in terms of its planning process, the content of the plan, public access elements incorporated in the plan, and design guidelines and standards regarding public access. The layers of state and local review process of the waterfront development are discussed. I believe these have played a significant role in creating public access.

4.1 Historical Background of Boston's Waterfront Access

Boston Harbor has played a major role in the socio-economic and cultural history of the city for more than 350 years. The presence of a large and protected port was the primary reason for the settling of Boston. The vitality of the waterfront fueled the growth of Boston as a center of international commerce from the 18th century. In the mid 19th century, Boston started to decline as a port city due to changes in shipping needs and competition with other ports. In addition, a shift

in traffic and urban growth patterns rendered many of Boston's piers vacant and useless. In the early 20th century, the decline of the port was accelerated as a result of a variety of problems: a decrease in shipping, physical deterioration and out-migration of industry and jobs, all of which contributed to its economic and physical collapse.

The decline of Boston Harbor started to reverse in the 1960's, when the city, through the urban renewal program, began an effort to revitalize its waterfront. The public sector has provided funding and leadership in rejuvenating Boston Harbor by stimulating both port and non-port activities on the waterfront. In the downtown waterfront, a new high-end residential community and office space have been created. The commercial activity, ranging from small shops to Faneuil Hall Marketplace, has blossomed, attracting millions of people to the waterfront. Boston's maritime heritage, together with its regional attractions, such as the New England Aquarium and the Waterfront Park, have been recognized as a lure for tourism. In addition, a large military base conversion project, transforming a former shipyard, Charlestown Navy Yard, into a mixed-use community with industrial, office, retail, residential and recreational activities, has proceeded. Boston has re-emerged as the center of a vibrant New England economy, and areas of the waterfront have been rediscovered as sites for investment opportunity.

There is no question that the waterfront revitalization efforts have stimulated Boston's economy, brought physical improvements to the waterfront, and re-established the city's historic link with the sea. However, in spite of their contribution to the city's economic recovery, many of the private developments, especially new offices and luxury condominiums and hotels, not only preclude water-dependent businesses and activities but also keep people off the water. A report of the Boston Redevelopment Authority (BRA) on Boston's waterfront (1985) revealed that only 18 percent of the harbor is accessible to the public and pointed out the inadequate public controls over private development which exclude public use of or access to the waterfront.

Pressures to continue this trend grew stronger as the city's economy boomed in the early 1980's, while public access has become more and more in demand as

waterfront areas have been redeveloped. These phenomena raised a concern as to whether the benefit of waterfront revitalization accrues to the general public, especially local residents who have long been cut off from the water by military installations, expressways, port facilities and private development.

Issues surrounding Boston's waterfront have been many and complex; conflicting interests compete for waterfront land, either to develop it or to protect it for public use or some possible future need. According to the BRA report (1985, p.8), considerable improvement opportunities are still available along Boston's harbor, given the large amount of vacant and under-used land. Now, private investors as well as more than 100 governmental agencies, associations and community groups in some way have been trying to get involved with the harbor development and management (Kildow, 1981). Never has there been a greater need for comprehensive planning and management of the harbor in order to balance the demand for development and the need to preserve waterfront areas for public use.

4.2 Legal Right for Public Access

4.2.1 Public Trust Doctrine

The fundamental legal basis for public access to the waterfront stems from the Public Trust Doctrine whose origin is found in ancient Roman Law. In 1641, the Massachusetts Bay Colony became the first entity in America to codify the Public Trust Doctrine in the Colonial Ordinance, which grants public access to tidelands for "fishing, fowling, and navigating" in inter-tidal area and ownership by the Commonwealth below the low tide line. In 1647, however, the Colonial Ordinance was amended to extend private property ownership to the low tide line in order to encourage private wharf construction and maritime commerce.

During the industrial revolution in the early 19th century, Massachusetts enhanced private ownership of tidelands to encourage commerce and navigation through a number of wharfing statutes. These statutes authorized private parties to construct and maintain wharves seaward of the extreme low tide line. This

practice resulted in extensive filling in of Commonwealth's tidelands. In brief, the public in Massachusetts only has legal right to access to the areas below extreme low tide line, while public rights in private tidelands are limited to fishing, fowling and navigation.

The uncontrolled private development of tidelands during the early 19th century gave rise to legal development. In 1866, the Massachusetts legislature created a permanent board, the Board of Harbor Commissioners, to regulate development in Boston Harbor. The board has been regulating all activity below the high water mark in Boston Harbor, known as the oldest regulatory program in America. This board was the predecessor to the current tideland regulatory body, the Division of Wetlands and Waterways in the State Department of Environmental Quality Engineering (DEQE).

4.2.2 Change in Legal Basis for Public Access

The 1979 Supreme Judicial Court (SJC) decision in the *Boston Waterfront Corp. v. Commonwealth* case, followed by the 1983 amendments to Massachusetts General Law (MGL) Chapter 91 Waterway Licensing Regulation, had a profound impact on the waterfront development in Boston thereafter. The Judicial opinions and statutory amendments have resulted in the regulatory changes which have greatly expanded the public's rights in the tidelands.

The so-called tidelands, the area below the high water mark, are made up of two distinct geographic areas (Fig. 4.1). The area between the mean high water line and extreme low water is owned by the upland owner; these areas are called private tidelands. The land seaward of the extreme low water line is owned exclusively by the public in Massachusetts and is called Commonwealth tidelands. These areas have been regulated under the Public Trust Doctrine.

The 1979 SJC ruling basically upheld the common law doctrine that artificial alterations of tidelands, filling in a portion of Commonwealth tidelands for instance, does not in itself alter ownership boundaries (Fig. 4.2). As a

consequence, virtually all of the urban waterfront in Massachusetts is now subject to a level of state control, since large portions of the real estate in coastal communities in Massachusetts are formerly filled tidelands⁶.

This landmark ruling held that lands seaward of the historic extreme low water mark, such as certain filled lands and wharves, could be held by private parties “only to fulfill a public purpose, and that the rights of the grantee to that land are ended when the purpose is extinguished.” Furthermore, the court ruled that “economic benefit” generally is not sufficient to satisfy the “public purpose.” Public access, on the other hand, is likely to be viewed favorably as a legitimate public purpose (Massachusetts Coastal Zone Management [MCZM], 1985 b, pp. 16-17). In addition, the court indicated that if the current use did not conform to the public purpose, the state could reclaim the land. The possible threat of the state’s take-over of waterfront properties in filled Commonwealth tidelands raised the uncertainty in and confusion about waterfront property ownership and future development.

Following the SJC ruling in 1979, the 1983 amendments to the MGL Chapter 91 Waterway Licensing Regulations introduced new procedures to the tidelands licensing process. Chapter 91 requires every project built below the historic high water mark, including the placement of piers, wharves and other structures, filling and dredging, to obtain a license from the DEQE, Division of Wetlands and Waterways. The 1983 Chapter 91 amendments require development on Commonwealth tidelands to provide significant water related benefits to the public. They also guarantee a great deal of public participation in project review process. In addition, the revised Chapter 91 provides financial security to the coastal development community, by requiring the payment of compensation when a license is revoked for any reason other than non-compliance. The amendments to Chapter 91 also give developers more certainty by requiring that DEQE specify the permitted uses in the license.

⁶ In the City of Boston, for instance, all of Back Bay, about 570 acres are filled tidelands.

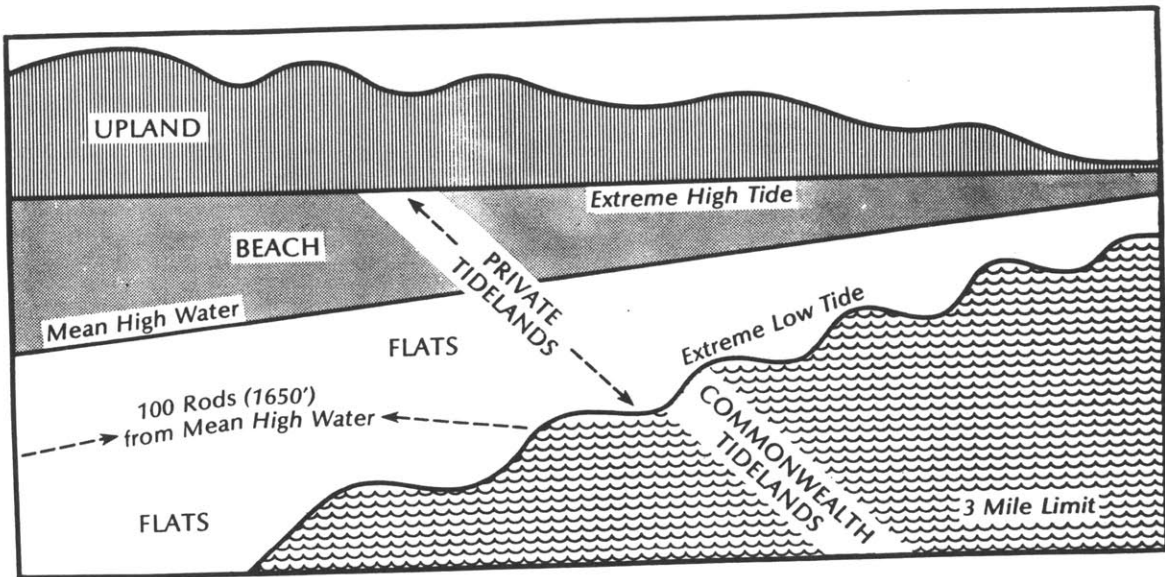


Fig. 4.1 Land Ownership in Undeveloped Tidelands

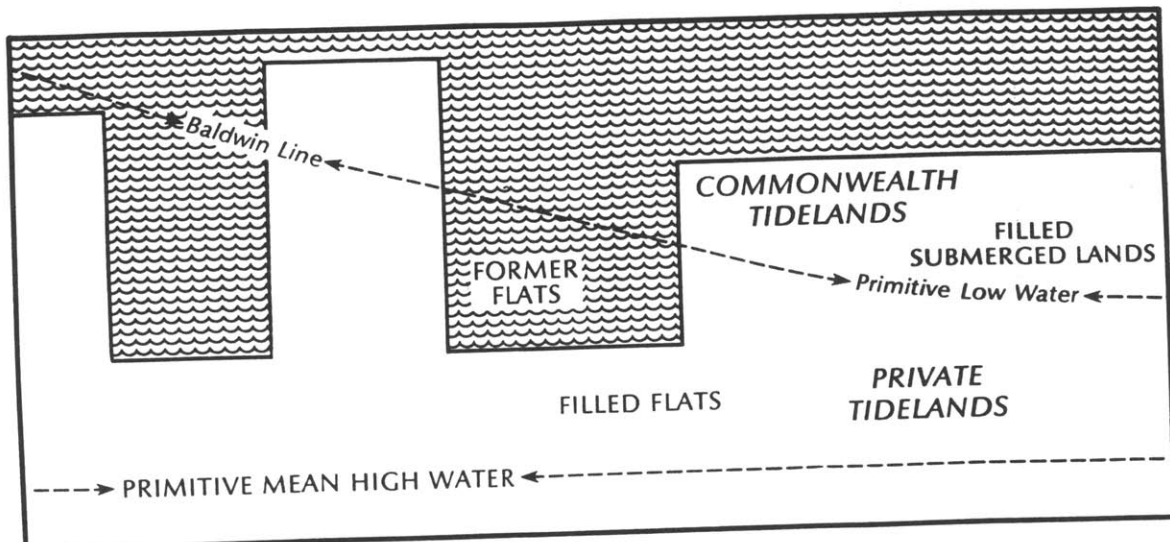


Fig. 4.2 Land Ownership in Developed Tidelands

4.2.3 Massachusetts Coastal Zone Management

Under the authority of the Federal Coastal Zone Management Act of 1972, Massachusetts initiated the Massachusetts Coastal Zone Management (MCZM) program to protect its coastline. The program was federally approved in 1978. The MCZM program established 27 regulatory and non-regulatory policies, which are used in conjunction with state regulatory programs and decision-making. The purpose of the MCZM program is to protect and carefully manage the development and use of the Commonwealth's coastal zone, which is officially defined to extend to 100 feet beyond specified major roads, rail lines or other visible rights-of-way and seaward to the edge of the territorial sea, including all of Cape Cod, Martha's Vineyard, and Nantucket (MCZM, 1978, p.14).

The MCZM staff consists of planners, lawyers, geologists, biologists, marine ecologists, engineers and regulatory specialists. The office provides expertise in the areas including legal assistance, water management assistance, planning guidance, natural resource information, and information clearinghouse (MCZM, 1988). Due to the success of the MCZM program in setting a "coastal agenda," the state legislature established a permanent office of MCZM within the Executive Office of Environmental Affairs.

From the very beginning of the MCZM program, the state recognized its role in maintaining coastal public access opportunities for all its citizens and developed policies that focused on recreation as well as visual, cultural and historic environments. Although most of the regulatory policies focus on environmental concerns, the following non-regulatory policies address the public access components of waterfront development more specifically :

- Policy 18: Encourage, through technical assistance and review of publicly funded development, compatibility of proposed development with local community character and scenic resources.
- Policy 20: Encourage, through technical and financial assistance, expansion of water dependent uses in designated ports and developed harbors, redevelopment of urban waterfronts, and expansion of visual access.
- Policy 21: Improve public access to coastal recreational facilities, and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians and via river for boaters.

- Policy 23: Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.
- Policy 24: Expand existing recreational facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansion or new acquisition in regions of high need or where site availability is now limited. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.

The MCZM's commitment to public access was also demonstrated through the development of programs for : (1) state-level acquisition of coastal lands; (2) financial assistance to municipalities; (3) project reviews for the protection and enhancement of amenities; and (4) technical assistance and other support services to communities with threatened coastal resources. In addition, funds from Community Assistance Grants Program and the Coastal Facilities Improvement Program, administered by the MCZM, have upgraded waterfront parks, recreational facilities and visual access opportunities.

The MCZM has developed the Harbor Planning Program to provide technical assistance, and in some cases funding assistance, to Massachusetts communities developing comprehensive harbor plans. The MCZM Harbor Planning Guidelines (MCZM, 1988) provides a framework from which communities may develop a comprehensive harbor plan. By expressing local priorities through harbor plans, communities improve their ability to participate in the Chapter 91 licensing process .

4.3 Comprehensive Plan for Boston's Waterfront : Harborpark Plan

4.3.1 Planning Process

In response to the increasing need for a comprehensive plan for Boston Harbor and significant change in coastal regulations at the state level , the Harborpark planning effort was initiated in 1984 by the Mayor Ray Flynn (BRA, 1984 a). The Flynn Administration established the Harborpark Advisory Committee (HPAC), consisting of 15 volunteers : five representatives of state and city government involved in waterfront planning and development, five representatives of private

business and labor concerns located on the harbor, and one community representative from each of the five waterfront neighborhoods: East Boston, Charlestown, North End / Downtown, South Boston, and Dorchester. The HPAC has been charged with advising the Mayor and the Boston Redevelopment Authority on policy and development affecting the Harbor and the surrounding waterfront. In 1987, the city created the Harborpark Interim Overlay District (IPOD), defined goals for the Harbor, and established temporary zoning controls while a permanent zoning plan was being prepared for Boston's waterfront.

In order to ensure that the revised Chapter 91 Waterways Regulations and the city's Harbor regulations are compatible and complementary, the city has worked closely with the relevant state agencies. The city proposed that Harborpark Plan serve as the management plan for the portion of Boston Harbor within Boston's jurisdiction for the purposes of Chapter 91. The city has also been facilitating the participation of and support by other state agencies, such as the Massachusetts Port Authority regarding maritime and water transportation facilities⁷, and the Massachusetts Water Resources Authority concerning water quality issues⁸.

The most important component of the Harborpark plan is the extensive community participation built into its planning process. Several neighborhood councils and citizen advisory committees have been established to review process and policies and to make recommendations on a broad range of issues facing the Harbor. Since the Harborpark IPOD was adopted in 1987, over 200 meetings with the public have been held (BRA, 1990, p.7). The participants in the community review process include various community leaders, waterfront residents and business representatives. This process has resulted in a positive balancing of numerous multiple interests that will benefit all of Boston's residents and visitors and, most importantly, protect the public's rights to waterfront access.

⁷ The Massport has participated in and supported the planning process especially concerning current and future maritime capacity and improvement of water transportation facilities in the harbor.

⁸ The Massachusetts Water Resources Authority has undertaken an extensive program to clean up Boston Harbor by building new sewage treatment facilities, ending the practice of dumping sludge left over from sewage treatment into the harbor, and reducing the amount of toxic chemicals allowed in sewage discharges. This work is supported by the Boston Water and Sewer Commission's ongoing overhaul of the City's antiquated sewer lines.

4.3.2 Plan Summary

The plan covers an area of over 2,000 acres encompassing the five neighborhoods abutting the Harbor: East Boston, Charlestown, North End/Downtown, South Boston, and Dorchester (Fig. 4.3). It generally includes all parcels between the water's edge and the first arterial road, expanded to the area having a functional relationship to Harborpark. In each of the waterfront neighborhoods, the Harborpark planning has recognized the needs and priorities and historic character of the individual neighborhood while respecting the harbor environment and reinforcing the state's Chapter 91 policies.

The plan has two principal aims: first, to ensure public access to and enjoyment of an "activated" water's edge; and second, to preserve and enhance the harbor's maritime industries which require deep-water shipping channels and land-side facilities. Designed to produce a variety of public benefits, the plan includes increased visual and physical access to and from the water's edge, increased private investment which will produce new jobs, new tax revenues, and housing opportunities for all income levels, and increased cultural and recreational amenities for public enjoyment.

The primary focus of the planning efforts was to update the Harbor's more than 20-year old zoning policies. The Harborpark District Zoning sets aside more than 1,000 acres of waterfront land as open space and initially reserves 660 acres for maritime industries in Maritime Economic Reserve Districts (MER). Under this zoning designation, key waterfront parcels are reserved solely for maritime-industrial uses, particularly for shipping. Underlying the MER is the recognition that the presence of deep water port facilities is very important for the New England economy to ensure that the region's manufacturers can compete in the international marketplace.

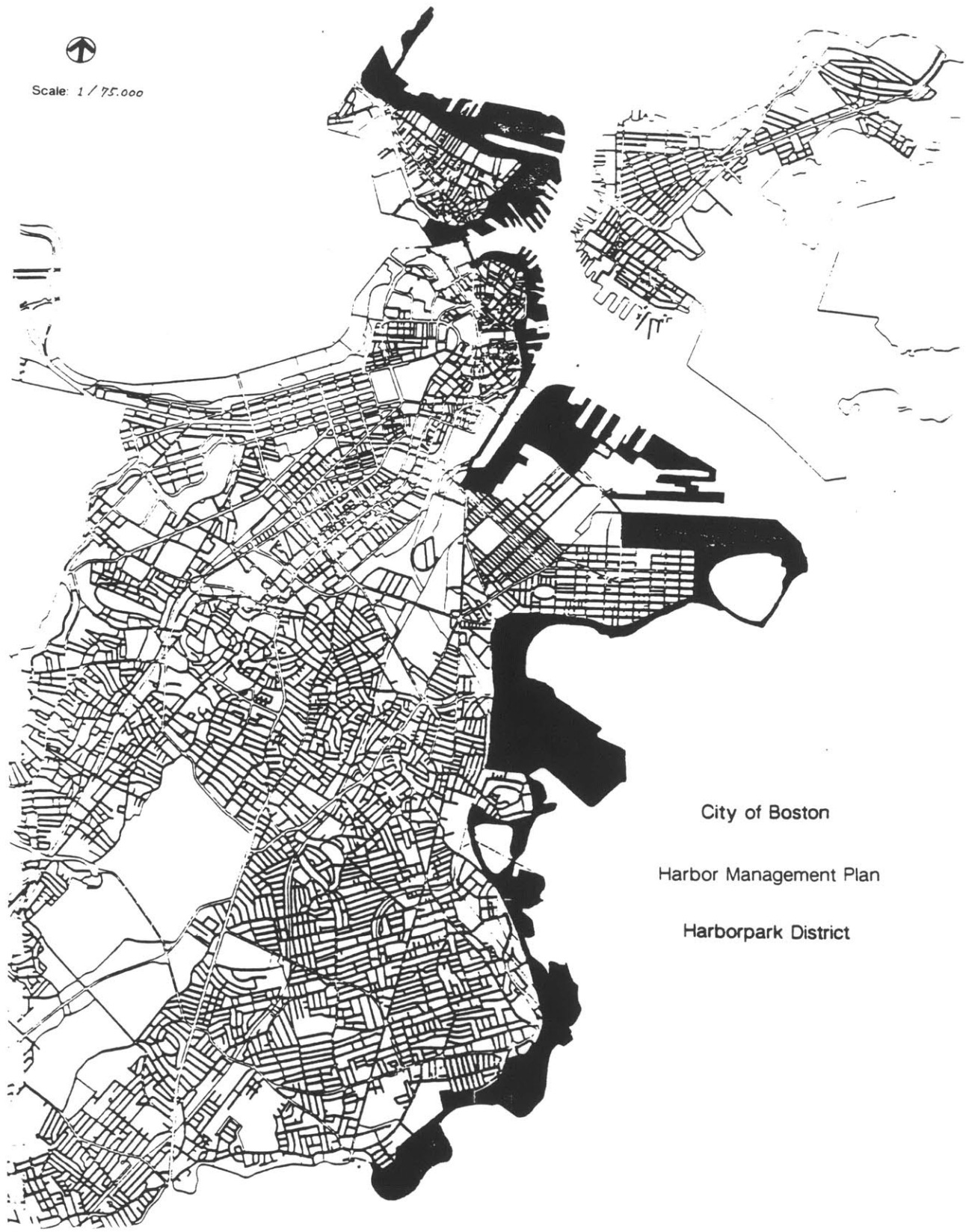


Fig. 4.3 Harborpark District

The Harborpark District includes requirements for 50 percent open space on new private development and public access along the perimeter on all sides. It also targets areas of the Charlestown Navy Yard and the North End for affordable housing for Boston's residents. The zoning also establishes a Water Transportation Priority Area in the Downtown Waterfront to guarantee that new projects incorporate docks or piers for major shuttles or ferries. The Harborpark District Zoning provides height, density, and use controls and establishes development and design review guidelines.

The plan links the city's land use controls directly to the MGL Chapter 91 regulations. Under the Harborpark District Zoning, substantive requirements are included to guide the recommendation to be made by the BRA in compliance with Chapter 91. The zoning provides that in making a recommendation, the BRA shall base its determination on the extent to which the project reasonably and appropriately preserves and enhances the public's rights in the tidelands.

4.3.3 Public Access Elements in the Harborpark Plan

Increasing public access to the waterfront, thereby promoting public use and enjoyment, is a primary goal of the Harborpark planning program. The Harborpark Plan includes a specific program, named "Harborwalk," aiming to achieve the public access goal through a public walkway system and related public amenities along Boston's waterfront. Harborwalk is a 43-mile continuous waterfront walkway that will provide 24-hour physical access, including handicapped access, to Boston's shoreline, stretching from the Neponset River to Charlestown and East Boston, with extensive connection to the pedestrian networks of adjoining neighborhoods. The public will be well-directed via signage and will have the benefit of all basic amenities, such as seating, lighting, landscaping, and works of public art.

Harborwalk is envisioned as a connecting element of the Harborpark Open Space Network. This network is an open space and outdoor recreation network totaling

over 1500 acres⁹, comprising various parks, waterfront setback areas, plazas, and green spaces provided as a condition of development. This is conceived as the waterfront continuation of Frederick Law Olmstead's "Emerald Necklace," with direct links to that system planned in several strategic areas. In addition, the Harborpark open space network will be linked to new parks along the Central Artery air-rights when the roadway depression is completed (BRA, 1995). The park plan for the new surface area will enhance and expand the Harborpark district and provide amenities and cultural and horticultural uses which broaden the appeal of the waterfront public access area.

The Harborpark Open Space Network also provides benefits on Boston's waterfront through a variety of integrated activities for public enjoyment. Included in this system are parks and recreational facilities, cultural and historic facilities, fishing piers, kiosks and shops, viewing/observation decks, marinas, sailing clubs, sculptures and public artwork, and water transportation. These public open spaces will be enlivened by cultural facilities such as historic exhibits, outdoor performance areas, urban gardens and wilds, and waterfront boulevards. The open space system will be linked by Harborwalk which, in turn, will be enhanced by amenities along its path.

Harborpark Plan provides two legal mechanisms that will guarantee the provision of public access to and along the water's edge in the implementation of Harborwalk: the Waterfront Access Zone and existing public easements. The BRA has drafted a Waterfront Access Zone Amendment to the Zoning Code in order to ensure that waterfront developments incorporate a Harborwalk system. The major provisions of the Waterfront Access Zone are as follows:

- The zone would preserve Boston Harbor as a valuable natural resource and public amenity by maintaining public rights to recreational and commercial activity in the harbor and by providing physical and visual public access to and along the water's edge.
- Along the length of the East Boston, Charlestown, Inner Harbor, South Boston, and Dorchester waterfronts, no structures other than those used for maritime-dependent industrial purposes could be erected within 35 feet of the water's edge. In the case of piers, where the BRA finds that compliance with this requirement is impractical, the requirement would apply only to the pier's end.

⁹ It is about 50 percent of the waterfront land area in Boston.

Alternative methods for access to the end of the pier and around the perimeter would be determined by the BRA.

- No Interim Planning Permit would be granted without a Public Access Plan. This would provide for public pedestrian access to the 35-foot walkway along the water's edge. Also, during the period the Harborpark IPOD is in effect, an applicant for the Interim Planning Permit would enter into a covenant to ensure continued maintenance of public access to and along the water's edge for a 99-year period.

In addition to the Waterfront Access Zone, a number of public access provisions, currently existing through public easements and requirements of Rehabilitation/ Land Disposition Agreements, would be used for linking the water's edge walkway to the major perimeter connectors.

The Harborpark Plan ensures that revitalization of the waterfront is focused on public use. The Harborpark District Zoning, therefore, requires certain uses ; within the North End Waterfront, Downtown Waterfront, Fort Point Waterfront, Charlestown Gateway, at least 40 percent of the first floor of any project must be devoted to facilities of public accommodation. These uses, including, but not limited to, cultural facilities and theaters, restaurants and cafes, retail shops, recreational facilities, hotels and motels, and ferry terminals and other public transit facilities. They will attract the public to the waterfront and provide points of interest along Harborwalk. In the Downtown waterfront sub-district, at least an additional 25 percent must be devoted to cultural uses chosen and designed with particular emphasis on attracting the public to the water's edge.

4.3.4 Design Standards and Guidelines for Public Access

Inner Harbor Urban Design Framework (Design Framework) provides building and site guidelines. This framework is applied to the North End/Downtown waterfront area, bounded by Atlantic Avenue/Commercial Street extending seaward, and serves as a basis of the BRA design and development review. The guidelines for other Harborpark planning areas are under preparation. The framework of design guidelines and recommendations work in conjunction with the Harborpark Zoning requirements and Chapter 91 recommendations to ensure

that the goals and objectives of Chapter 91 and the Harborpark planning policies are met.

The Design Framework defines three building types, wharf buildings, pier buildings and auxiliary structures. Elements included in the guidelines are building placement and setbacks, building height, design of roof, balconies and projections, uses of ground floors, facade design, and building materials. The guidelines embody physical and visual access elements¹⁰. In addition, the framework incorporates the following Harborwalk requirements in its site guidelines:

- All projects are required to provide a continuous public walkway along the water's edge. Buildings must be set back a minimum of 12 feet from pier and wharf sides and 35 to 50 feet from pier and wharf ends in the North End and Downtown districts respectively.
- All projects should provide adequate public seating, trash receptacles and light fixtures along Harborwalk. For each project, it is suggested that two 6-foot benches, or equivalent seating, be placed every 50 linear feet of Harborwalk and one trash receptacle for every 150 linear feet. Light fixtures must be in harmony with the marine and historical setting of the Inner Harbor.

The Harborwalk Program provides a set of goals and guidelines consistent with the public access goal of Harborpark Plan. The overall access goal is to create a continuous walkway which is easily accessible, enjoyable, and usable in many ways by the public. The following is a subset of goals, for each of which a brief description of the goal and a set of consistent guidelines¹¹ are provided.

- Goal 1: To accommodate a wide variety of uses and diversity of users.
- Goal 2: To maximize physical access.
- Goal 3: To maximize visual access.
- Goal 4: To design Harborwalk as a major year-round connector.
- Goal 5: To design a safe and comfortable walkway.
- Goal 6: To increase historical/cultural/educational/recreational activities.
- Goal 7: To maintain the Boston city character.

Harborwalk will enhance a diverse, interesting, and enriching experience to the public. The uniformity and variation will be achieved through the application of design standards related to elements such as the water's edge promenade, cross-wharf walkways, sidewalks, bikeways, water shuttle terminals, lighting, landscaping, pavement patterns, and miscellaneous furnishings.

¹⁰ See Appendix C: Selected Elements for Inner Harbor Urban Design Framework.

¹¹ See Appendix D: Design Goals and Guidelines for Harborwalk.

4.4 Development and Design Review Process

4.4.1 State Review Process

The MEPA Process

The Massachusetts Environmental Protection Act (MEPA) requires a state review of certain projects to evaluate their environmental impacts. The MEPA process provides a forum for both state and local concerns, and it gives organizations like the Harborpark Advisory Committee and other individuals or groups the opportunity to voice their opinions within a formal review process.

The MEPA process begins when a project proponent files an “Environmental Notification Form (ENF),” a description of the proposed project. The ENF is circulated to state agencies for review and is also available for the general public. If a project seems likely to have significant environmental impacts, the Secretary of Environmental Affairs will request an Environmental Impact Report (EIR) that describes the project in greater detail and presents alternative development strategies and measures to mitigate environmental impacts. A draft EIR is circulated for agency and public comments. The comments are then summarized by the MEPA unit and must be addressed by the proponent in a final EIR. If a project is determined to meet all necessary environmental and planning criteria, the Secretary of Environmental Affairs issues a certificate of MEPA compliance. After an appeal period, state agencies are then eligible to permit the project.

Chapter 91 Waterway Licensing Program

Chapter 91 requires every project built below the historic high water mark to obtain a license from the DEQE, Division of Wetlands and Waterways. A license fee is assessed to compensate for the public rights granted in the license. Procedurally, there are a number of provisions which ensure public notification of proposed projects and an opportunity to comment.

All proposals for projects not dependent on proximity to the water, such as restaurants and condominiums, must receive a public hearing in the affected community. Prior to this public hearing, the license applicant must publish a notice in the local paper and notice is sent to the Town Hall. While projects requiring direct access to the water do not require a public hearing, a local official can request that a public hearing be held. Before any project can be constructed below the historic high water mark, a number of important determinations must be made by DEQE. Any non-water dependent project must satisfy three conditions:

- (1) The project must serve a "proper public purpose."
- (2) The project must provide greater public benefits than public detriments relative to the tidelands.
- (3) The project must be consistent with the Massachusetts Coastal Zone Management Program.

Water-dependent uses must satisfy conditions (1) and (2), but condition (3) is only mandatory for activities in Commonwealth tidelands (Fig. 4.1, 4.2). This determination will be based largely on whether the proposal adheres to local waterfront or harbor management plan. A community with a comprehensive waterfront plan certified by MCZM, therefore, will be able to influence significantly the Chapter 91 licensing decision. First, the DEQE will presume that the consistency requirement has been fulfilled in the event that a proposed project conforms to a harbor plan that has been formally certified. Second, DEQE will look to this plan in determining whether a proper public purpose is served by the project.

To satisfy the benefit-detriment and the MCZM consistency tests, proponents of waterfront projects must provide significant water-related benefits to the public. Local officials may contribute to the Commonwealth's evaluation of the adequacy of these public amenities at the public hearing and in writing. Suggestions from local officials regarding the community's needs for certain public access amenities will be carefully considered in the Chapter 91 licensing process (MCZM, 1985 b). Chapter 91 also allows a developer to provide public improvement to a harbor as an alternative to paying a fee for tidewater displacement. Instead of paying this fee, developers may be authorized to provide public access themselves, on or off site, or contribute to a local fund for public access.

The MCZM reviews and comments on proposals for coastal development including Chapter 91 tidelands licensing process. Reflecting the requirement of Chapter 91 waterways regulation, “the extent to which the project blocks the public view of the coast or the ocean or is incompatible with the existing characteristics of its neighborhood,” visual access considerations have been an important part of MCZM and DEQE review of all proposed waterfront buildings, and have occasionally produced significant layout and design changes.

4.4.2 Local Review Process

BRA Article 31 Development Review

Under the Boston Zoning Code (BZC) Article 31, the BRA has direct responsibility for reviewing development proposals in Boston (BRA, 1986). The BRA evaluates the quality and appropriateness of a proposal based on objectives stated in plans, guidelines, and regulations governing development in Boston. These requirements will be applied to any proposed project of 10,000 or more square feet of new space or 10,000 square feet of rehabilitated space. All projects subject to the Article 31 review shall satisfy requirements relating to five development review components: transportation, environmental protection, architectural design, historic resources and infrastructure systems. Article 31 procedures require extensive design and environmental review through a public process.

The BRA Article 31 review starts upon the submission of the Project Notification Form (PNF) by the proponent. The BRA reviews proposals based on their overall viability and expected benefits to the city. Review criteria may vary depending on location, type, and size of the project. Design criteria include specifications for building height, massing, materials, and other guidelines to preserve Boston’s history and character. Environmental impacts of the projects are assessed in terms of daylight, wind, groundwater, and air and water quality, both during construction and upon completion. Effects on surrounding neighborhoods, such as displacement and community participation, are also considered in the review process.

These review procedures were adopted to the Harborpark District Zoning. The new zoning for the Harborpark district creates a primary legal mechanism for implementing the planning policies. The development review requirements and urban design guidelines work in concert with the more objective regulatory requirements to maximize the public benefits of a development particularly as it relates to the interests of Chapter 91¹². In reviewing development projects contiguous to the Harborpark District, the BRA will consider and apply Harborpark policies through the development and design review process. The City of Boston and the neighborhood advisory groups which help review development projects have a strong commitment to restoring public access connections to the waterfront and creating a revitalized water's edge with water-dependent uses that are appropriately balanced with residential, commercial and public uses and with transportation access and support uses.

To receive an adequacy determination by the BRA, the Final Project Impact Report (FPIR) for Article 31 of any applicant must also comply with the urban design guidelines set forth in the Harborpark District Zoning. The public access provision is a crucial factor that should be incorporated in the project proposal. The urban design component of a project review and analysis must be made of the extent to which the project enhances the pedestrian environment. Elements through which pedestrian spaces can be activated and enhanced include connections to public transit, public art, street furniture, lighting, signage, and landscaping.

Micro-climate elements such as wind, sunlight and shadow are critical components in determining the quality of the public spaces along the waterfront. These components also are highly specific to the particular site, massing, height and surrounding context of a development proposal. The technical analyses must be conducted on a project-by-project basis to determine the environmental impact and inform the development on placement of open space and other public amenities in terms of maximizing their benefit to pedestrians.

¹² For instance, under the plan, most new waterfront buildings will be approximately 5 stories tall, the historic height limits for nearby neighborhoods, or lower. The plan also allows a few 7-to-12 story buildings where they would be consistent with the urban character and density of the surrounding area.

The BRA not only has responsibility for reviewing proposed projects but also functions as a coordinator for development projects. Since projects vary in size and complexity, not all requirements are appropriate to all projects. Therefore, the extent of the review is defined at an initial meeting between the proponent and the BRA staff members. Furthermore, the BRA has expedited and streamlined the process by adopting provisions in the Article 31 development review requirements that coordinate the process and timing of a city's project impact report with the State's MEPA process.

BRA Article 28 Design Review

The Boston Civic Design Commission (BCDC), established by the approval of the BZC Article 28 in 1986, is an advisory review body for planning and development projects proposed in the City of Boston (BCDC, 1991). The BCDC consists of eleven members appointed by the Mayor, including at least six members who are professionals in the fields of architecture, landscape architecture, or urban design, and at least one member with expertise in historic preservation or architectural history. As stated in Article 28 of the BZC, the purpose of the BCDC is to assist and advise the city in the design review of projects that affect the public realm and provide a forum for the general public and the professional design community to actively participate in the shaping of the city's physical form and natural environment.

The BCDC reviews large-scale projects (exceeding 100,000 square feet) and projects of special significance (those in a historic district or close to landmark buildings). In addition, the BCDC reviews civic projects and district design guidelines adopted by the BRA for both the downtown areas and the neighborhoods. The pedestrian environment, particularly access to public places, has consistently been the focus of the review of both planning and development proposals¹³. Therefore, access to the Harbor and Harborpark walkways is subject to the BCDC review. In addition, preserving and establishing important vistas

¹³ Executive Director, BCDC. Telephone interview. 21 March 1996.

and view corridors are issues that have been raised for every project and plan that the BCDC has reviewed to date.

A public meeting on every matter submitted to the BCDC for its review is held before the BCDC conducts its final vote and makes its final recommendation. All such public meetings require at least seven calendar days' notice to the general public in a newspaper of general circulation. The BCDC may make recommendations to the Mayor and the BRA as to the approval, the need for modifications, the need for further review, or the disapproval of the design of projects subject to its review. Such recommendations must be made within sixty days of the date project plans are submitted to the BCDC, with the exception of a necessary extension, if approved by the BRA.

One of the design principles of successful, human scaled environments underpinning the BCDC review, and closely related to waterfront access is as follows:

The Design of Streets and Public Walkways

Insure that public spaces are accessible via clearly defined streets and walkways and provide active ground floor uses along public ways, especially adjacent to or in conjunction with public spaces, to increase usability, animation and interest.

Chapter 5 : Case Application : Commercial Wharf

5.0 Introduction

Two subsequent proposals for marina reconstruction projects on Commercial Wharf in the downtown waterfront are chosen as a case application (Fig. 5.1, 5.2 (a)~(d)). As a matter of convenience, I hereafter call the project, “Marina Reconstruction Project: Phase 1 (MRP: Phase 1),” and “Marina Reconstruction Project: Phase 2 (MRP: Phase 2).” These projects were proposed in 1985 and 1992 respectively on the same site, two finger piers on the seaward end of Commercial Wharf and the surrounding water. The MRP: Phase 1 encountered rigorous review and failed to get through the process. On the other hand, the MRP: Phase 2 finished the whole review process and obtained approval from the BRA in February 1996.

The following section presents a history of the redevelopment on Commercial Wharf since the 1950's. For each MRP, the project proposal, public review process is outlined, with emphasis on the issues and concerns raised on the project and how they were addressed by the project proponent. In addition, some of the unresolved issues and concerns of affected parties are presented.

5.1 History of the Redevelopment of Commercial Wharf

Redevelopment of Commercial Wharf is traced back to the 1950's, when Neal Tillotson acquired the entire wharf property, including a six-story granite building constructed in the early 19th century. He converted the upper four floors into housing units and the lower two floors were converted into commercial units. In 1964, Commercial Wharf was incorporated into the “Downtown Waterfront / Faneuil Hall District,” under the BRA urban renewal program. In 1967, Tillotson sold the entire property to a developer, Blue Water Trust (BWT), which made some improvements to the building.

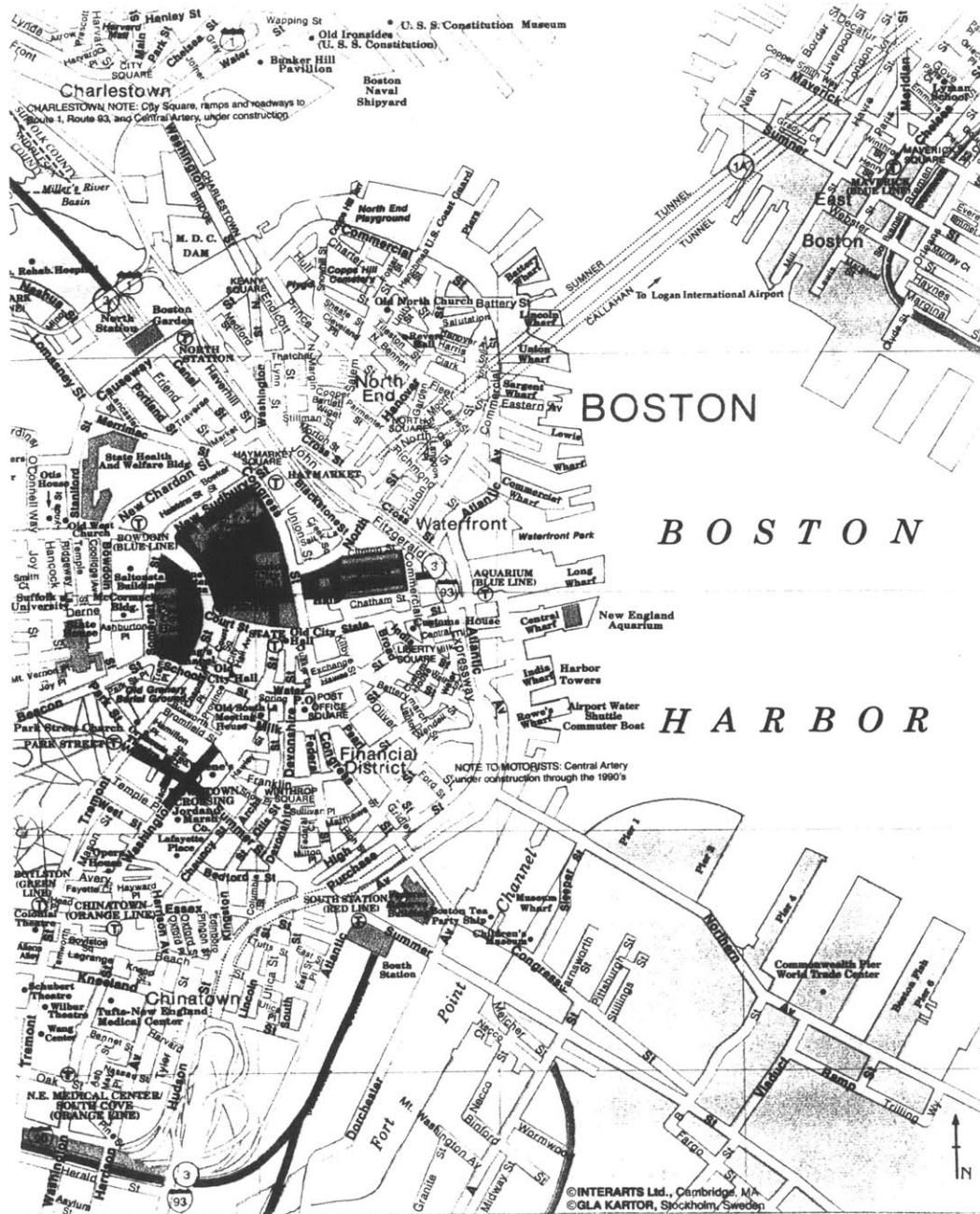


Fig. 5.1 The Location of Commercial Wharf

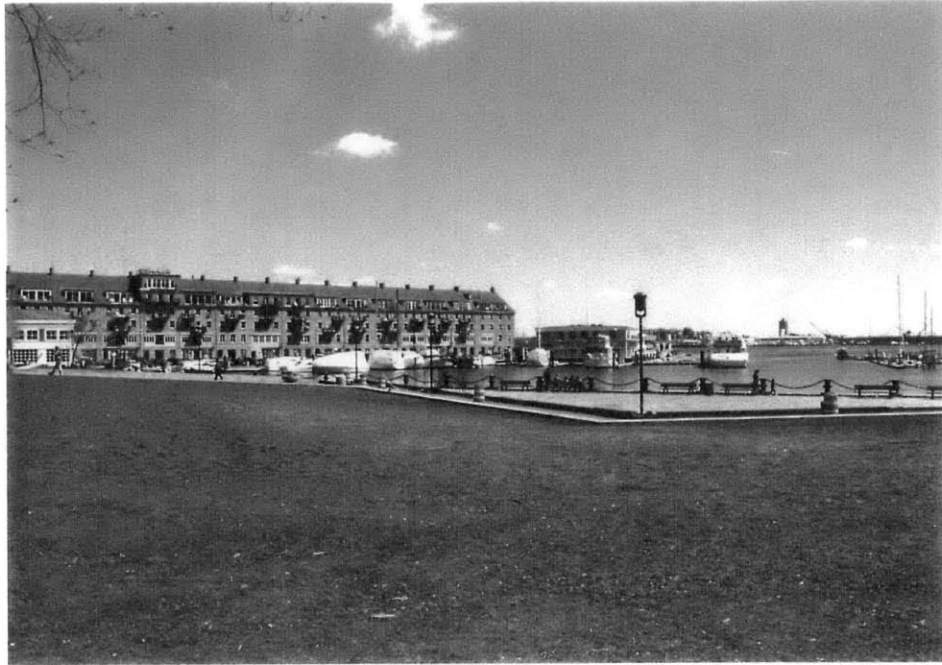


Fig. 5.2 (a) Commercial Wharf, View from the Waterfront Park



Fig. 5.2 (b) Guarded Gate on Atlantic Avenue and Walkway along the Condominium (South Side)



Fig. 5.2 (c) Northern Driveway and Parking Space



Fig. 5.2 (d) Locked Gate on Atlantic Avenue (North Side)

In 1974, BWT and the BRA filed a document entitled "Rehabilitation Agreement," which provides conditions and restrictions applied for the rehabilitation on Commercial Wharf. A part of this agreement represents the BRA's thinking on public access in the urban renewal era.

- Pedestrian traffic shall be permitted between the hours of 9:00 A.M. and sunset to the accessible water's edges of the Premises, excluding the marina float areas
- No vehicular traffic shall have access to the Premises except as permitted by Redeveloper
- Safe access across to and from the premises onto the nearest main traffic artery, which is presently Atlantic Avenue, ... is necessary and shall at all times be available for vehicular traffic to and from all entrances and exits of the Premises
- Public access to the Premises shall at all times be consistent with the security of the Premises...

In 1978, BWT filed another document entitled "Commercial Wharf East Condominium Declaration of Covenants and Easements." BWT wanted to convert the granite building into a 60-unit condominium. However, the area of the land owned by BWT was not large enough to fulfill a zoning requirement of the Floor Area Ratio (FAR) 2.0. In order to settle this situation, BWT created rights and easement to use the Retained Land (Fig. 5.3). In exchange for these rights and easement, the developer accepted certain restrictions. This document later caused a conflict of access easement in the MRP: Phase 2. The following is an excerpt from this document closely related with public access easement :

1. Declarant hereby grants to the owners from time to time (use) of the Retained Land, and declared that the Condominium Land shall be subject to :

(a) the non-exclusive right and easement to use the Condominium Land for vehicular and pedestrian access to the Retained Land for all purposes over the areas shown as "Parking and Driveway" on the plan ... including the right, subject to paragraph 2 thereof, to control and collect fees for the parking of vehicles in such area(s), subject to the right reserved to the owners of the Condominium Land to have adequate vehicular and pedestrian access to the Condominium building;

(b) a non-exclusive easement to maintain, repair, replace and install utilities to the Retained Land on, under and over the said area shown as "Parking and Driveway" on said Plan.

2. The owners of the Retained Land at its own cost and expense shall maintain and manage the said Parking and Driveway area in the same condition as said land is in on the date hereof, including, without limitation, making necessary repairs and replacements thereto, clearing snow therefrom, providing for reasonable security at reasonable hours and

obtaining and maintaining public liability insurance on said land with limits of not less than a single limit of \$1,000,000 for claims for bodily injury or property damage arising out of one occurrence, said insurance to name the owners of the Condominium Land as additional insureds.

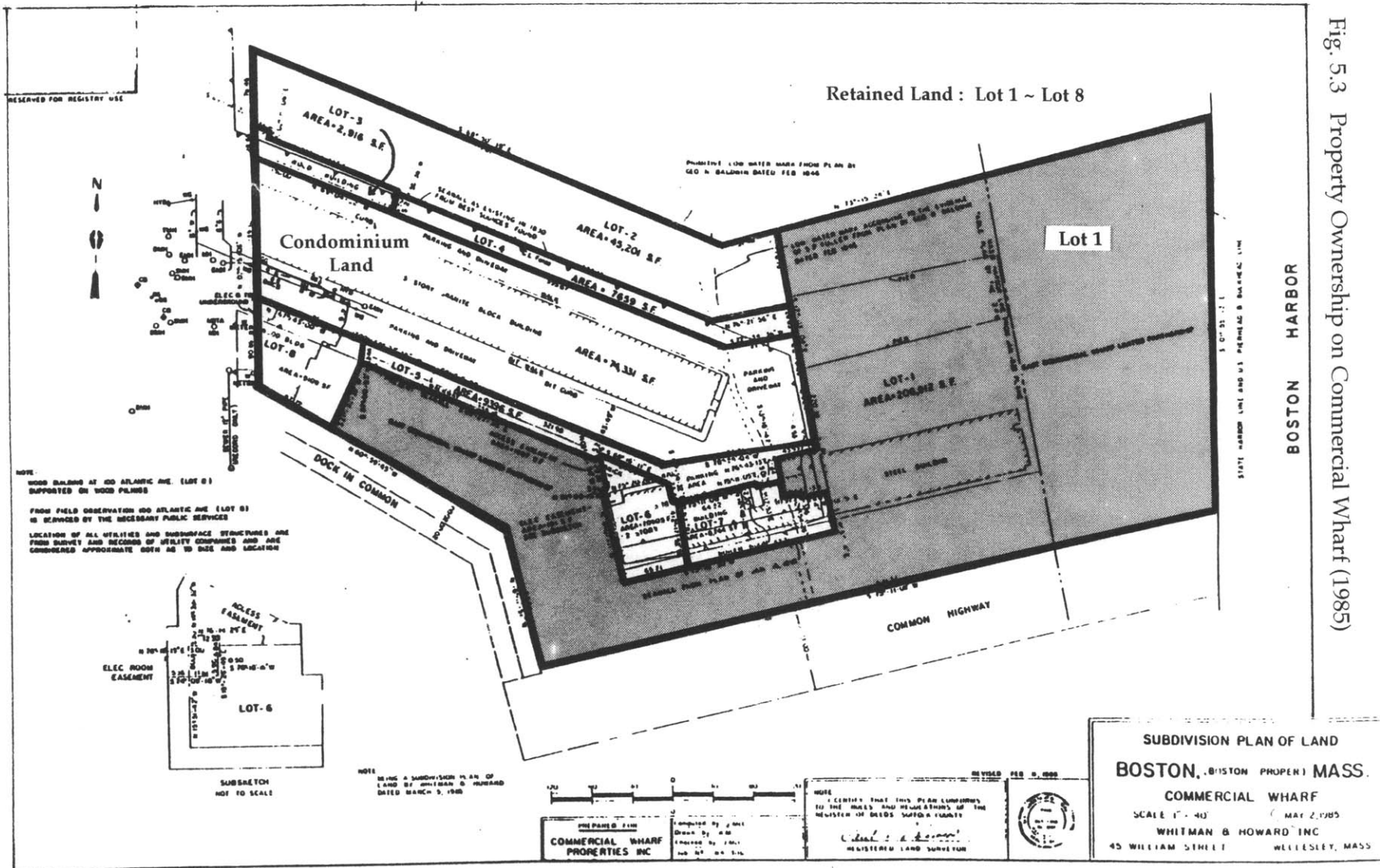
5.2 Marina Reconstruction Project: Phase 1

5.2.1 Project Summary

In 1985, one of the principals of BWT, Arthur B. Blackett established East Commercial Wharf Limited Partners (ECW) and purchased Lot 1 (Fig. 5.3) from BWT. ECW proposed an expansion of Boston Yacht Haven, a 25-slip marina which has been in operation since 1972 on the southern part of Commercial Wharf (MRP: Phase 1). The project site consists of approximately 3.4 acres (148,000 square feet) with two deteriorating pile-supported timber piers adjoining the easterly end of the solid, filled portion of Commercial Wharf. The northern pier is in such dilapidated condition that it is fenced off from any public use or access. The southern pier supports a vacant, one-story, approximately 11,700 square foot, metal-framed warehouse building. This pier's perimeter has pile-held floating docks attached to existing wharf pilings.

The following information about the proposal appeared in the Environmental Notification Form (ENF) submitted to the State and Project Notification Form (PNF) to the BRA in November 1985. The proposal was to expand the marina by constructing approximately 70 new slips, a floating wave attenuator, approximately 5,000 square feet of public open space, and an approximately 3,000 square foot marina service building which would include public space (Fig. 5.4).

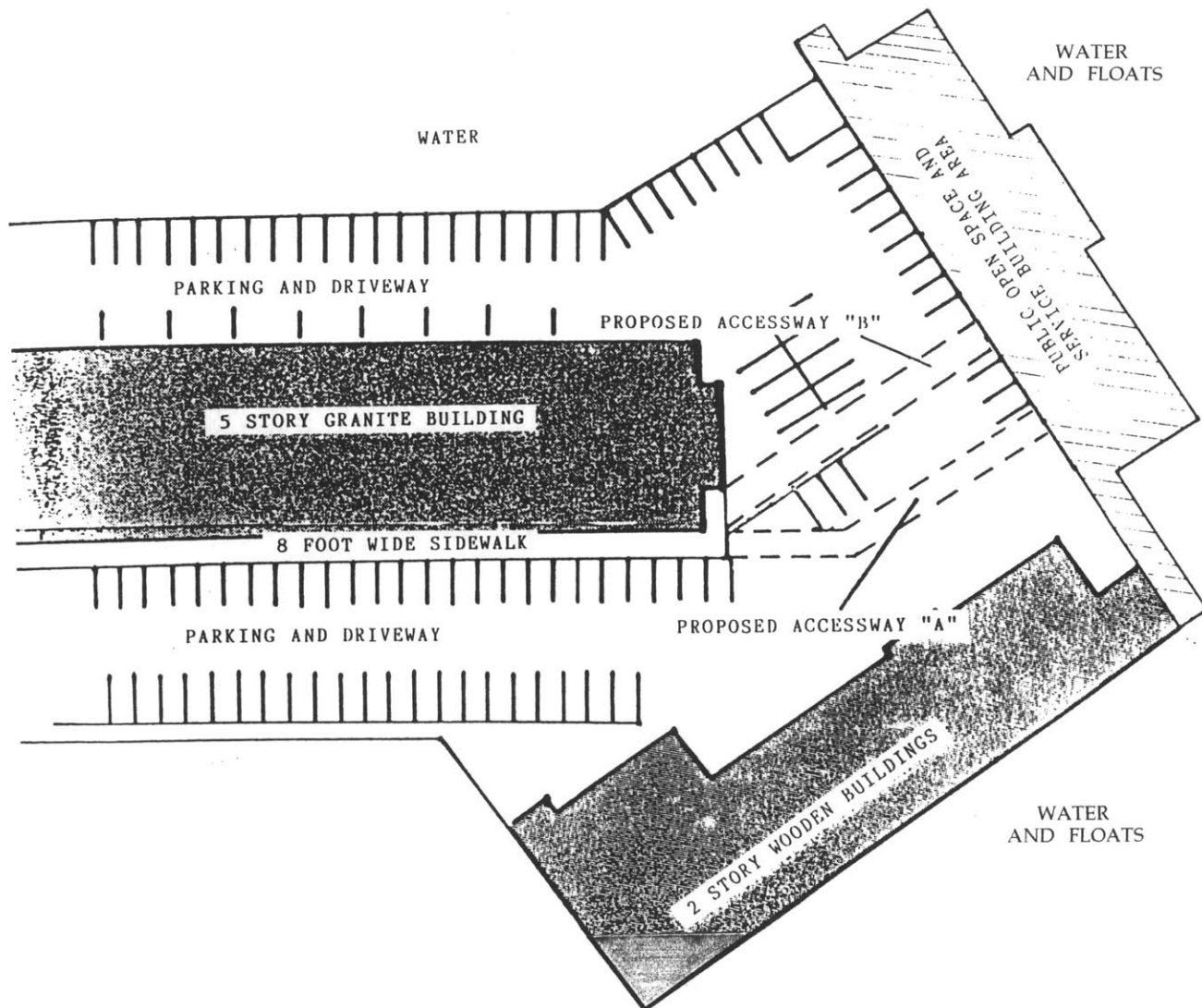
Fig. 5.3 Property Ownership on Commercial Wharf (1985)



LOT 1 - EAST COMMERCIAL WHARF L. P.
 LOT 2 - MARINA NOMINEE TRUST
 LOT 3 - WHARF NOMINEE TRUST
 LOT 4 - WATERFRONT PARK L. P.

LOT 5 - WATERFRONT PARK L. P.
 LOT 6 - WATERFRONT PARK L. P.
 LOT 7 - BLUE WATER TRUST
 LOT 8 - 100 ATLANTIC AVENUE L. P.

Fig. 5.4 Marina Reconstruction Project: Phase 1



The area of proposed expansion is along the southeast and east perimeter of the Wharf, including the area presently occupied by Commercial Wharf's southern and northern piers. The service building would include an interior space with panoramic views up and out the Harbor which would be open to the public during the day and available for function use by public groups at night. Public amenities on the floats would include an area for unrestricted pickup and drop off of passengers, a dinghy dock for use by moored or anchored boats, a holding tank pump out station, and navigational aids to facilitate safe passage to and around the marina.

The proponent described the public benefit of the project in the ENF as follows :

The facility is intended to provide an attractive variety of opportunities for the Commonwealth's boating and non boating public. The open public space will span the entire end of Commercial Wharf and provide opportunities for fishing, observation, and relaxation in an area which is physically isolated from the city's fast pace and noise.

However, the proposal failed to provide critical information, such as dimensions of the building, and the location and scale of various uses. For example, the marina service building had not been designed, and its location and footprint shape as indicated only represented the building's general placement. The ENF just mentioned that "the specific location of the marina service building on the deck would be determined to maximize the public's enjoyment of the site and minimize its impact on view corridors".

5.2.2 Public Review Process

During the ENF circulation period, the MEPA unit received many comments on ECW's proposed project. Among them were the BRA, the Environment Department of the city of Boston, Harborpark Advisory Committee (HPAC), and the Commercial Wharf East Condominium Association (CWECA). These comments are presented below.

The BRA¹⁴ described the project as follows:

The project, as proposed, constitutes a piecemeal approach to the completion of the redevelopment on Commercial Wharf. No approvals are recommended until it is determined whether the various owners on this wharf would be willing to submit a comprehensive plan for the completion of the redevelopment.

Furthermore, the BRA required that the redevelopment of Commercial Wharf should be well coordinated with other projects including Long Wharf redevelopment and Reconstruction of T Wharf, considering its critical location and size. The BRA criticized the ENF for having insufficient information and recommended that an EIR be required because of the project's lack of contribution to achieving the city's Harborpark goals and the need to resolve serious public access and parking problems on the wharf.

The city's Environment Department¹⁵ pointed out that the proposed expansion of the pier went beyond the existing pier or bulkhead lines and was too close to the main channel, which might cause navigational hazard. It also urged the proponent to address the construction impact in terms of procedures, traffic impact caused by many trucks expected, noise, and sediment contamination. The Environment Department required better analysis on the parking demand for the proposed expansion and a public access plan for the project that includes quality public open space.

The HPAC¹⁶ was concerned about not only the navigational impact of the structure expansion beyond the existing pier or bulkhead lines but also about an infringement on the public's rights to fish and navigate. The HPAC further claimed that a locked gate and a guard house of the parking lot leads the public to an unwelcome impression of the pier. Since the accessways to the wharf were in areas over which the proponents have no ownership or control, the HPAC was concerned that public access might be restricted by the owners of the property in question. The HPAC recommended that the DEQE seriously consider any application for a Chapter 91 license for this development given the poor state of public access and the ownership issues involved therein.

¹⁴ BRA. Letter to the MEPA unit. 21 April 1987.

¹⁵ City of Boston Environmental Department. Letter to the MEPA unit. 15 April 1987.

As well as the other parties, parking and public access issues were of prime concern for the CWECA¹⁷. It was concerned about the increase in demand for parking space on Commercial Wharf, which was already operating over its capacity for certain periods of time. The ECW conducted a parking demand estimation assuming that mass transit would provide a significant access alternative to vehicles. However, considering the nature of the proposed use, with presumably high income individuals using the marina, the CWECA was skeptical about this assumption. A foreseeable increase in parking demand also raised concerns about environmental effects, noise and air pollution.

The CWECA expressed its viewpoint on public access as follows:

While the Condominium Association does not oppose public access to the harbor, it is concerned about the mode of that access. As we understand it, East Commercial Wharf Partnership proposes that the public be allowed to travel to the marina along the Condominium's walkway, then cutting across the parking and driveway area to the marina. The Condominium Association opposes this mode of providing public access. We are concerned that the portion of the proposed public access cutting across the parking and driveway area is dangerous and an unnecessary hazard. A far better mode for public access would be along the water, not through the middle of Commercial Wharf.

The idea of "public access along the water's edge" is perceived as the best resolution among the residents, in order to protect privacy and security of the people living in the condominium as well as securing traffic safety on Commercial Wharf¹⁸. Finally, the CWECA declared that the ECW had no legal right to provide access to the marina across the walkway owned and managed by the condominium.

During the project review process, ECW was caught in financial trouble due to the mismanagement of the marina on the southern part of Commercial Wharf. Without revising the proposal, ECW turned down the MRP: Phase 1 and the site, Lot 1 was foreclosed.

¹⁶ Harborpark Advisory Committee. Letter to the MEPA unit. 15 April 1987.

¹⁷ CWECA. Letter to the MEPA unit. 15 April 1987.

¹⁸ Resident in the Commercial Wharf East Condominium.. Personal Interview. 18 & 25 April 1996.

5.3 Marina Reconstruction Project: Phase 2

5.3.1 Project Summary

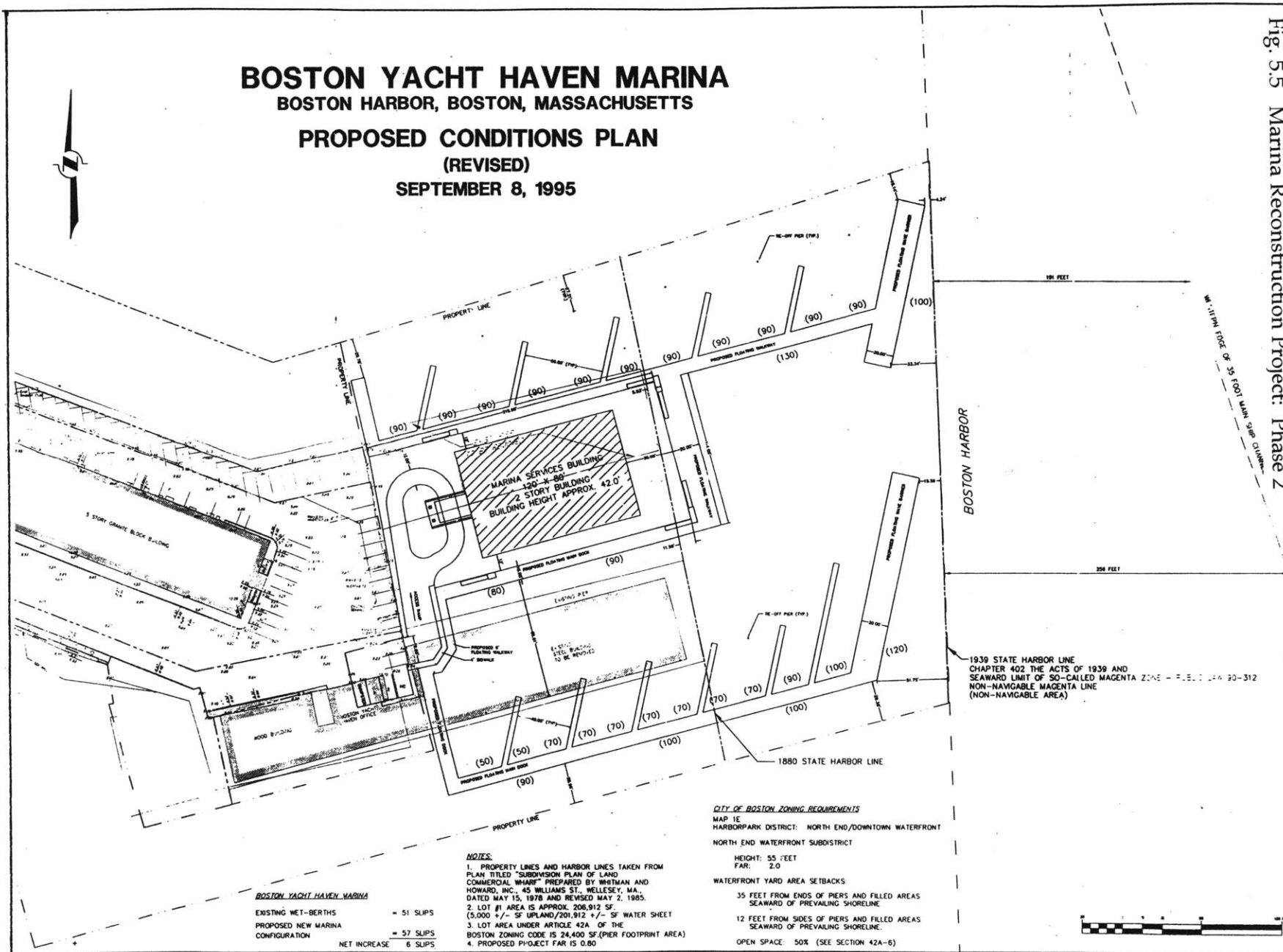
Since 1990, the successor of ECW, Modern Continental Marine, Inc. (MCM) has been operating the marina, Boston Yacht Haven, on the southern part of Commercial Wharf. The docking facilities presently provide 24 wet berths around the perimeter of the southern pier for recreational boats. In 1992, MCM acquired ownership rights to Lot 1 and initiated planning and design of the MRP: Phase 2 (MCM, 1994).

The project (Fig. 5.5) includes the removal of the existing pile-held floating docks that presently provide 24 wet-berths for recreational boats around the perimeter of the southern pier, the removal of the two existing deteriorated pile-supported piers, and the removal of the vacant warehouse building located on the southern pier structure. Following the removal of these structures, MCM proposes the construction of a new pile-supported concrete pier in approximately the same location as the existing north pier and public access platforms. The project also includes a new marina service building, and a new reconfigured pile-held floating dock system to create 30 wet-berths at the seaward end of Commercial Wharf.

The proposed reconstruction and reconfiguration of 30 new wet berths, combined with the 27 existing wet berths on the south side of Commercial Wharf, will provide the marina with a total berthing capacity of approximately 57 wet slips. The new marina facility has been designed specially to accommodate the berthing and servicing of large recreational vessels and motor yachts in the range of 50 to 130 feet in length. The slips will be leased to the general boating public on a seasonal, first-come, first-served basis. The slips will also be available to transient motor yachts and vessels visiting Boston Harbor when open slips are available.

**PROPOSED CONDITIONS PLAN
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A new two-story building with the approximate dimensions of 80 feet by 120 feet will be constructed on the new northern pier. This building will provide support services for the marina facility, including a ship chandlery and supply store, a marina office, vessel crew's quarters, showers, laundry facilities, a marina food service facility, and public rest rooms. On the harbor side of the building, an approximately 4,000 square foot pier-head open space area will be provided with seating areas for viewing the marina and the harbor. The building provides public walkways and seating space on its second floor. However, the first floor and the berthing area are exclusively for use by people leasing the slips or their guests; therefore most of the water's edge will be fenced off from the general public.

The marina is publicly accessed by boat via the harbor, or by pedestrian or vehicle from Atlantic Avenue. The vehicle and pedestrian access to the site is to reserve the existing access routes and circulation patterns on Commercial Wharf presently serving the marina facility. The existing route of vehicular traffic to the marina facility is from one-way in from Atlantic Avenue along the south wharf driveway and one-way out along the north wharf driveway, with a controlled access gate on the south side of Commercial Wharf. Pedestrians accessing the marina from Atlantic Avenue will continue to use the sidewalk along the perimeter of the condominium, which is retained as access easement, and will access the new pier deck using a new four foot wide sidewalk on the access ramp. Parking and dropping-off of marina users and supplies will take place on the property presently owned and controlled by MCM. A limited use access ramp and vehicle drop-off and turning area will be provided on the new pier for short term transit/handicapped access related to marina use.

5.3.2 Public Review Process for Creating Public Access

Since the initiation of the project in 1992, over twenty public meetings, public hearings, and design review meetings with municipal and state planning, design and regulatory review agencies have occurred until September 1995. During the same period, seven project planning and design review meetings were conducted by the proponent with the CWECA (MCM, 1995, pp. 27-28).

At the state level , the proposed project is classified as a water-dependent use under the DEQE Waterways Licensing Regulations, and has been designed to comply with the applicable design and use standards under Massachusetts General Law Chapter 91 and its regulations. The proponent filed the Chapter 91 Waterway License Application in April, 1993. After one month of the public comment period on this licensing application, the application entered in final licensing review at DEQE.

The project is subject to MEPA review since it involves the construction, replacement and expansion of pile-held and pile-supported structures of 2,000 square feet or more in base area, in waters subject to Chapter 91 jurisdiction. On June 1, 1993, the proponent submitted an ENF for the project, initiating review by the Executive Office of Environmental Affairs under the MEPA. In July, 1993, the Secretary of Environmental Affairs issued the Certificate on the ENF, and determined that an Environmental Impact Report (EIR) was not required for the project to proceed through state licensing review and approval.

At the local level , the proposed new pile-supported pier structure and marina service building have been designed to comply with applicable design and use standards for a Water-dependent/Water-related use as required under the Zoning Code for the Harborpark District and the North End Waterfront District. In February 1994, the proponent submitted a PNF to commence the BRA's Article 31 review process. In May 1994, the BRA issued its Scoping Determination, outlining the submission requirements for the Draft Project Impact Report (DPIR). In December 1994, the proponent submitted a DPIR for the proposed project. In March 1995, the BRA issued a Preliminary Adequacy Determination, outlining the issues to be addressed in the FPIR. The proponent submitted an FPIR in July 1995, in response to the Preliminary Adequacy Determination.

The BRA Article 28 review, the BCDC public meeting for design review was held in July, 1994. The BCDC focused on the pedestrian environment, particularly public access and safety issues¹⁹. The commissioners noted that the proposed development would contribute to the enhancement of the public realm as well as

¹⁹ Executive Director, BCDC. Telephone interview. 21 March 1996.

visual improvement of the dilapidated pier structures. The BCDC recommended approval of the project for the BRA 31 permit.

Throughout the review process, the proponent emphasized its extensive consideration and incorporation of public benefit in the project, including public access in the form of pedestrian walkways and seating areas for viewing the harbor and improved boater access to the site as well. The proponent listed the project's contribution to the Boston Harbor waterfront, such as improved aesthetics by the removal of existing dilapidated and blighted waterfront structures, enhancing water-dependent uses of tidelands, improved visual access to the Harbor. In addition, the proponent demonstrated that the consistency of the proposed building with the scale and size of surrounding and compatible water-dependent uses.

In general, the response of public agencies was positive. Their opinions and comments supported the proposal, especially with regard to the public access elements as well as its contribution to the rehabilitation of the Boston Inner Harbor and promotion of water-dependent use. In February 1996, the BRA Article 31 approval was issued and the construction is supposed to start Fall 1996.

5.3.3 Unresolved Issues

The condominium residents have not been satisfied with the outcome²⁰. Their primary concern is the size and scale of the proposed marina service building, which the CWECA described "disproportionate to the size and scale of the marina facility." The restaurant and public access facilities in the service building will drastically increase the number of people entering Commercial Wharf. This will cause overburdening not only to the access easement on the sidewalk along the condominium but also to the parking that is already operating over capacity. The residents are also concerned about traffic accidents which might occur in the parking and driveway, because their liability is provided in the document,

²⁰ CWECA. Letter to the BRA. 1 August 1995.

“Commercial Wharf East Condominium Declaration of Covenants and Easements.”

Some of the comments on this project that I obtained through an interview with one of the condominium residents are noteworthy²¹. The interviewee raised a question of what “public” means in this project. The users of boating facilities are presumably not categorized as “general public.” Although public access will be provided within the site, most of the water’s edge will be exclusively in use by boat owners or their guests. Whether non-boating people can really enjoy the water is in question.

The interviewee also claimed that it is unclear who is responsible for providing or improving public access. On Lincoln Wharf and Lewis Wharf, the developers were required to make a linkage payment, which was allocated to the construction and improvement of the public access. On the other hand, the developer of the MRP: Phase 2 did not have to do this. The sidewalk of the condominium, designated as a public access from Atlantic Avenue to the proposed marina site, will be maintained by its own expenses. This raised unfairness among the residents of the condominiums.

The interviewee also questions the enforcement of the public access provision. A restaurant on the southwest side on the wharf was renovated in 1985, and it should have been required to provide public access. The need to obtain revised Chapter 91 license was recorded in a document from the DEQE to the restaurant owner. However, the restaurant somehow circumvented the review process and pursued its renovation without providing public access around its property. The same is true for the office building located on the southeastern end of Commercial Wharf. These results indicate that although a new procedure of state and local review is very strict, there is no enforcement for providing public access.

²¹ Resident in the Commercial Wharf East Condominium.. Personal Interview. 18 & 25 April 1996.

Chapter 6 : Conclusion

6.0 Introduction

The following section provides a brief summary of the lessons learned from the case studies and applications of in California and Boston. These lessons lead to general recommendations, including measures to mitigate costly delays imposed on the waterfront development by the public review process, the need for enforceable implementation strategies and an organizational structure for implementation of public access goals, and the ways in which government intervenes in shoreline development with a limited resources.

6.1 Lessons from Case Studies and Applications

6.1.1 The California Coast

In California, the citizen initiative and legislative efforts in the 1970's established the State Coastal Commission and Coastal Conservancy. These state coastal agencies have implemented the California Coastal Plan quite successfully since their inception. Public access, one of the major goals of the plan, has been achieved through the Joint Coastal Access Program (JCAP), where the Commission regulates coastal developments which might impair public access, and the Conservancy mainly focuses on access project implementation through land acquisition, design and construction of accessways and other public facilities, and the establishment of a management program. The efficiency of this organizational structure has gained nation-wide attention (Grenell, 1994).

In creating public access, the Conservancy has been playing a significant role. Working with government agencies, nonprofit organizations, citizens' groups, and individuals, the Conservancy has been directly involved in creation of accessways along the California Coast. With its flexible operation and sound funding, the Conservancy has realized potential accessways or improved existing accessways

for more public use. The Conservancy not only creates coastal access but also oversees the conditions of management and maintenance after the accessways are constructed. In addition, the Conservancy staff in charge of the access program has conducted a regular inventory, which has been a valuable resource for the JCAP to seize access opportunities and enforce implementation.

The success of the California Coastal Program, including the JCAP, could not have been achieved without extensive public involvement and support from the onset of the program. This could be attributable to the relatively high level of environmental consciousness of the people in California. Moreover, the Coastal Commission and Conservancy has made continuous efforts to keep people aware of the coastal issues through various publications and newsletters, as well as through open seminars and public gatherings.

The Sea Ranch case, however, which took almost a decade for settlement, was one of the lengthiest processes in the history of the California Coastal Program. This is partly due to the fact that this case arose in the earliest stage of the program. Some of the Commission's decisions seem to have been ad hoc and lacked strategic consistency. Furthermore, the Conservancy did not get involved in this case as much as that it has done since the Sea Ranch case, simply because it had not been in existence until the final stage of this case. The Conservancy only contributed to the construction of the trail and accessways and the conveyance of the maintenance responsibility of these facilities to Sonoma County. If the Conservancy had worked more intensively as a mediator among the commission, developer and residents, the results might have been different.

It should be noted that Halprin's original master plan in 1964 contained public access elements such as public access easement along the shoreline, visual access from the highway and approaching roads, and equal opportunities for access. Despite objectives similar to the public access goals in the California Coastal Plan, the Sea Ranch development lost this original intention as the site planning was transferred to the developer's in-house planners, and then to outside consultants. Rather, driven by the sales objective, the latter development sought higher density

and began to wall the public off from the Sea Ranch beach both visually and physically.

Originally, public access was the prominent issue which awakened citizens' concern about the Sea Ranch development, leading to the passage of Proposition 20. However, the public access issue, for some reason, became a magnet of other problems, such as impact of the development on traffic and environment. As a result, the Sea Ranch was drastically scaled down to slightly more than half of the original 5200-unit community. It is too simple to explain that the alteration of the development was due to the moratorium imposed by the Coastal Commission, given the fact that most of the units had already been constructed by the time the Commission started regulating the Sea Ranch development. There were other factors, such as the housing recession and unfeasible scale of the original development plan, which forced the alteration to the development.

The Sea Ranch case was settled with a provision for five accessways, a bluff-top trail and a regional park. The question of whether this public access deserves the long struggle of negotiation and litigation is still open. Nonetheless, the access facilities provide visitors with opportunities for exploring the beauty and nature of the Sea Ranch. These facilities have been kept in good condition due to the efforts of the county's Park and Recreation Department.

During these ten years, the Commission and Conservancy have faced new challenges. Steadily decreasing funding coupled with the state's continuing deficit has resulted in a severe shrinkage of available fund for the coastal agencies as well as other state agencies. Furthermore, as the Conservancy's discretionary funding is increasingly limited, so is the agency's own contribution to public access. This was further accelerated by the court decision on the Nollan case, which strictly prohibited the government's taking land without compensation. It has become more and more expensive to acquire land for access easement. As a result, the Nollan effect has significantly reduced the Conservancy's flexibility, which is one of the agency's most vital characteristics.

Overall, the provision of public access to the California Coast through the coastal management program could be judged successful. As the coastal agencies matured and a large portion of the public access projects was completed, the people's interest has simply shifted to more environmentally oriented ones, such as preservation of wildlife habitats and conservation of wetlands. Now, the coastal agencies need a new vision for their future direction.

6.1.2 Boston's Waterfront

In Boston's waterfront development, the public review process both on the state and local levels provides an in-depth scrutiny of a project in many aspects associated with coastal regulation. At the state level, public access is required to be incorporated in the waterfront development proposal under the State Environmental Policy Act and the Chapter 91 Waterway Licensing Program. At the local level, a waterfront project proposal must include public access under the Harborpark zoning ordinances and obtain approval from the Boston Redevelopment Authority (BRA). In addition to those public agencies that are in charge of enforcing public access provisions in the waterfront development, the presence of water resources introduces additional and overlapping agencies at both levels of government. This fragmented jurisdictional involvement has made up complex institutional frameworks guiding the management of Boston's waterfront. As a result, the public review process tends to be complicated and lengthy.

Not only government agencies but also numerous citizen groups, such as neighborhood associations, preservation organizations, and recreational boating clubs, are interested in the condition and use of Boston's waterfront. The public review process provides a forum for these citizen groups to participate in an extensive discussion of a proposed project. While citizen participation is a necessary ingredient of good urban development, the demands voiced by each group and individuals often collide in waterfront projects. Consequently, the review and permit process tends to be time-consuming and laborious.

Waterfront projects often become caught in a web of coastal regulations and conflicting interests, and thus, in many cases, the complex and lengthy public review process imposes a financial burden on the developers. That is why it is believed that only wealthy developers can afford to proceed with projects on Boston's waterfront. As in the case of the marina reconstruction project phase I, the developer, caught by a costly delay in the permit and review process, had to turn down the project proposal. Even if the developer had eventually obtained permission and proceeded with the project, he might have raised the lease fee for the marina in order to pay off its development costs and might have created an exclusive marina as a consequence. The implication is that the lengthy public review process can jeopardize equity of access. This clearly conflicts with the state and local goals of public access.

The layers of state and local regulation have a high degree of capability to detect "bad" projects which do not comply with plans and guidelines or do not fulfill coastal regulations, especially concerning requirements for public benefits. The process also has potential to improve the proposed project to fit in the plan's goals and regulations. On the other hand, the expected costly delay encourages developers to duplicate what has been approved in the past, undermining creativity and innovation.

The public review is conducted on a project-by-project basis and tends to focus only on the project site. As long as the proponent provides public access within the project site, he/she is likely to pass the public purpose test, as observed in the Marina Reconstruction Project: Phase 2 on Commercial Wharf. The developer has no right and/or obligation to improve the access from the main artery road to the project site. It remains unclear who is responsible for creating, managing and maintaining the public access for this project. There are many cases where public access encompasses properties of fragmented and transitional ownership. This legal constraint makes it difficult to create continuous public access along the water, one of the main goals of the Harborpark Plan.

Furthermore, there is an ultimate physical constraint to create public access on the wharves and piers; the area is sometimes too small to accommodate public access.

Even if physically feasible, public access inherently has a conflicting factor against such uses as private residences if it is created too close. It is understandable that the residents feel fear of diminishing privacy and security. A comprehensive approach and site specific strategies are necessary to address issues stemming from the legal and physical constraints inherent in Boston's waterfront.

6.2 Recommendations

More often than not, shoreline development is caught up in a complex maze of permit requirements and regulatory controls from various levels of government. Sometimes these authorities and jurisdictions are overlapping and contradictory. This is especially true for urban waterfront development. Cumbersome regulatory procedures can therefore obstruct implementation of urban waterfront projects and consequently impose costly delays on developers.

There are ways in which the regulatory system can be streamlined or improved. For instance, the BRA combines the Article 31 review with the state MEPA process in order to eliminate or consolidate some of the review steps through joint public hearings and coordination of required documents. Other measures to avoid overlapping regulatory systems and to expedite the permit process are found in California's state-local partnership in coastal management, where the state regulatory authority delegates its permit authority to the local governments on the condition that the local coastal plan conforms to the state-wide policies.

It is also helpful to provide adequate information regarding the permit process to the developers, citizen groups and affected communities, in order to reduce confusion and misunderstandings about specific requirements and procedures. Although this technique does not change the existing regulatory system, it can avoid the delays due to the accumulative effect of trivial mistakes in documentation and schedule keeping. It also helps open up the review process and facilitate public participation in a more concise manner.

The case study and application of California and Boston indicate the importance of an enforceable program implementation and authority if public access is to be created. In this regard, the California case demonstrates an efficient model, with a specific public access program and the State Coastal Conservancy as a project implementation agency. Under this access program, a management and maintenance program is required when accessways are open to the public, and the Conservancy oversees the operation after the access facilities are created. This has been working as an effective enforcement of the implementation of access projects.

There has been a growing trend that all levels of governments have suffered from continuing fiscal stringency. Although the most speedy way to create public access has been through land acquisitions, it has become increasingly difficult within a time of limited resources. In addition, since the Nollan case, government taking issues have been at stake. The case has had a tremendous impact on the whole public access arena, requiring governments to for compensation. This has made it even more difficult for government to assemble land needed for public access.

Governments seek feasible alternatives to assembling land necessary for public use and access. The Transfer Development Right is one of the more economical means to create public access, as used to acquire land for a regional park in the northern site of Sea Ranch. The California Coastal Conservancy has been working on the partnership with non-profit organizations and local land trusts. Although this method is less direct and therefore in many cases it takes a long time, these groups have begun to take on an important role in land preservation and public access provision in California.

As observed in both case applications, residential use often conflicts with public access. From a resident's point of view, public access brings with it a significant level of threat to privacy, security and safety. While some of the property owners on shoreline land or in waterfront condominiums understand the need of public access, others simply cannot accept the general public accessing the shoreline

across their properties. Moreover, some view public access as an intrusion on their private property.

This type of thinking about public access is partly attributable to the pervading land ethic in the United States that private property transcends social values; once ownership of the land is attained, the owner can do with it whatever he/she wishes. The right of property ownership is constitutionally guaranteed and court decisions have supported it for a long time. Unfortunately, there is a growing trend to bring these conflicts to legal action. However, it is important to remember that everybody wishes to avoid costly litigation and that legal decisions do not necessarily bring about the best possible outcome. In order to balance the rights of the individual with the rights of the public, the role of mediator and negotiator are called for.

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Appendix A : Selected Standards for California Coastal Access

General Standards

Standard No. 1: Coastal access facilities should be located where they safely accommodate public use, and should be distributed throughout an area to prevent crowding, parking congestion, and misuse of coastal resources. Accessways and trails should be sited and designed: (a) to minimize alteration of natural landforms, conform to the existing contours of the land, and be subordinate to the character of their setting; (b) to prevent unwarranted hazards to the land and public safety; (c) to provide for the privacy of adjoining residences and to minimize conflicts with adjacent or nearby established uses; (d) to be consistent with military security needs; (e) to prevent misuse of environmentally sensitive habitat areas; and (f) to ensure that agriculture will not be adversely affected.

Standard No. 2: Coastal accessways located in areas of high fire or erosion hazard should be managed and constructed in a manner that does not increase the hazard potential. Access facilities on productive agricultural lands or timberlands can be temporarily closed during harvest or pesticide application times. Where appropriate, coastal accessways should be designed to correct abuses resulting from existing use.

Standard No. 3: Access facilities constructed on access easements should be no wider than necessary to accommodate the numbers and types of users that can reasonably be expected. Width of accessway facilities can vary from a minimum of 30 inches for a trail to a maximum of 10 feet or wider for ramps or paved walkways, depending on factors such as topography and proximity of the accessway to developed areas or major support facilities. Wherever possible, appropriate wheelchair access to the shoreline should be provided.

Standard No. 4: The design and placement of accessways should fully provide for the privacy of adjoining residences. Each vertical access easement in a residential area should be

sufficiently wide to permit the placement of an appropriate accessway facility, such as a stairway, ramp, trail and fencing, and/or landscape buffer as necessary to ensure privacy and security. Depending on local considerations in single-family residential neighborhoods, vertical accessways may be fenced on the property line and use restricted to daylight hours.

Standard No. 5: Public access to environmentally sensitive areas such as wetlands, tidelands, or riparian areas should be evaluated on a case-by-case basis. Such accessways should be consistent with the policies of Chapter Three of the Coastal Act, and should be designed and constructed so as to avoid adverse effects on the resource and, where possible, enhance the resource. All such proposals should be reviewed by the State Department of Fish and Game and the Coastal Commission.

Definitions, Specifications and Location Criteria for Accessways

Standard No. 6: Lateral Accessways

Definition: An area of land providing public access along the water's edge. Lateral accessways should be used for public pass and repass, passive recreational use, or as otherwise designed in a certified LCP.

Specifications: Lateral accessways should include a minimum of 25 feet of dry sandy beach at all times of the year, or should include the entire sandy beach area if the width of the beach is less than 25 feet. They should not extend further landward than the foot of an existing shoreline protective device or be closer than 10 feet to an existing single-family residence, unless another distance is specified in a certified LCP. Where development poses a greater burden on public access, a larger accessway may be appropriate.

Location: Lateral accessways should be located on all beachfront land to provide continuous and unimpeded lateral access along the entire reach of the sandy beach or other usable recreational shoreline, such as along

bulkheads. Exceptions to this standard might include military installations where public access would compromise military security, industrial developments and operations that would be hazardous to public safety and developments where topographic features such as rock outcroppings or river mouths could be hazardous to public safety.

Facilities: The proximity of the ocean generally precludes any development on these narrow strips of land other than portable support facilities such as trash receptacles, picnic tables and benches, or retractable ramps or boardwalks designed for use by persons with disabilities.

Standard No. 7: Vertical Accessways

Definition: An area of land providing a connection between the first public road, trails, or use area nearest the sea and the publicly owned tidelands or established lateral accessways. A vertical accessway should be used for public pass and repass, passive recreational use, or as otherwise designed in a certified LCP.

Specifications: Vertical accessways should be a minimum of 10 feet wide as provided in the Coastal Commission's Statewide Interpretive Guidelines for Public Access.

Location: Vertical accessways should be established in all beachfront areas and should be evenly distributed and carefully located throughout such areas to the maximum extent feasible. They should be located where they provide access to onshore and/or offshore recreational areas.

Urban Areas: Where single family development exists or is planned, vertical accessways should be located where streets end at the shoreline, once every six residential parcels, or up to but not more frequently than once every 500 feet. New multiple family residential projects of five dwelling units or more should provide sufficient open space within the project for a vertical accessway and an adequate public parking area, and for construction of the access facility. Condominium conversions of existing multiple family developments of five dwelling units or more should, where feasible, provide a vertical

accessway on-site. If such a facility cannot feasibly be provided within the project, it may be provided off site, but within the same general area. The presence of a public beach area with adequate access facilities nearby (within a quarter mile) could reduce the needed frequency of vertical accessways in residential areas, as could alternative proposals from homeowners associations to provide adequate public beach access.

Commercial developments on shoreline parcels should enhance the shoreline experience by providing (or preserving) views of the ocean, vertical access through the project, and accessway facility construction and maintenance as part of the project.

Industrial development of beachfront parcels should provide vertical accessway and parking improvements appropriate to safe public shoreline use, and according to the extent to which the potential public use of the shoreline is displaced by the industrial facilities.

Rural Area: Land divisions of beachfront parcels or shoreline parcels containing beach areas should provide a vertical accessway to the beach area either as a separate parcel or as an easement over the parcels to be created. For parcels greater than 20 acres in size, for parcels which contain more than one beach area, or where the beach area is one of substantial size (quarter mile long or greater), more than one vertical accessway may be necessary. In rural areas, residential subdivisions for planned unit developments should provide vertical access facilities according to the previously stated standards for urban residential development.

Divisions of agricultural lands or timberlands should designate a vertical accessway (or accessways) of sufficient width to protect persons using the accessway and to protect adjacent crops. At least one vertical accessway should be provided on undivided agricultural or timberland parcels, through acquisition if necessary, if the parcels contains a safe beach area appropriate for public use, and where this accessway would not interfere with agricultural productivity.

Facilities: Vertical accessways can be developed with a wide range of facilities including stairways, ramps, trails, right-of-

way overpasses and underpasses, or any combination thereof. Drainage systems to prevent bluff erosion and shoreline protection measures may be necessary in areas where these factors are a problem. Vertical accessways should include appropriate support facilities.

Standard No. 8: Upland Trails

Definition: An area of land providing public access along a shorefront bluff or along the coast inland from the shoreline where the opportunity for lateral access along the water's edge does not exist. An upland trail can also link inland recreational facilities to the shoreline. An upland trail should be used for public pass and repass, passive recreational use, viewing the ocean and shoreline, or as otherwise designated in a certified LCP.

Specifications: Upland trail easements should be a minimum of 25 feet in width, and should be in no case be located closer than 10 feet to an existing residence.

Location: Upland trails should be established on oceanfront parcels of land, along blufftop areas, or on land further inland depending on topographic conditions for optimal trail location. Upland trails should provide continuous pedestrian and/or equestrian access for passive recreational use along portions of the coast where beach access is severely limited or nonexistent. Upland trails should also be located to provide a connection between the shoreline and inland units of the federal, state, or local park systems, between shoreline access easements, or between the road and a scenic overlook. Upland trails should not be located on geologically unstable blufftop areas, on highly erosive soils, or on prime agricultural soils unless the trail easement would not disrupt agricultural production.

Facilities: Upland trail development can include clearing and grading of the trail tread; vertical and lateral clearing of brush; installing steps, footbridges, and hard surfacing where appropriate; providing an adequate trail drainage system; and the installation, where needed, of support facilities such as trash receptacles, benches, barriers, restrooms and signs.

Standard No. 9: Scenic Overlooks

Definition: An area of land that provides the public a unique or unusual view of the coast.

Specifications: Scenic overlooks should be considered an access destination, and access trails and support facilities provided where appropriate as determined by the use and location of the overlook area.

Location: Scenic overlooks should be established on parcels that are accessible to the public road or an upland trail. Overlooks should be located on promontories or other areas that would provide vistas of a unique or unusually beautiful portion of the coastline. Once such an overlook is established, either by prior use or by designation in a certified LCP, scenic easements on surrounding parcels should ensure, to the maximum extent feasible, that permitted structures will not block or in any way diminish the views of the shoreline. Industrial developments occupying significant portions of the shoreline should provide a shoreline viewing area or suitable observation facility if vertical access to the shoreline is not feasible.

Facilities: Facilities can range from minimal development of a roadside turnout with parking spaces, trash receptacles, and fencing as appropriate to protect private property and public safety, to a fully developed roadside rest area. Overlooks which are away from the nearest road should be accessible by trail, ramps, or stairs, and facilities can range from simple benches to viewing platforms or pavilions. Scenic overlooks should include features to enhance access for persons with disabilities, including guard rails, curb cuts, and wheelchair ramps from parking areas to the overlook area.

Appendix B : The Design and Development of the Sea Ranch

(Excerpt from the Brochure of the Sea Ranch)

Planners

The land was rediscovered for its beauty by architect and planner, Al Boeke, who began to conceptualize the possibilities of a second home community that harmonized with and was not injurious to the environment. Boeke approached the Hawaii based Castle and Cooke Inc. with his idea of "building clusters of unpainted wooden houses in large open meadow areas and not allowing fences or lawns." In 1963, Castle and Cooke, through a subsidiary, Oceanic California Inc., purchased the entire 5200 acre ranch for \$2.3 Million Dollars. A number of experts were attracted to the challenge by Boeke's enthusiasm for his ideas of stewardship of the environment.

Massive studies of native plants, animals, soils, and climate were conducted. Logging slash and debris were removed from the forested areas. The logged and over-grazed areas were replanted with thousands of trees. To reverse the effects of erosion and to provide wildlife refuge, native grasses and wildflowers were reseeded.

Lawrence Halprin, renowned landscape architect, drew on the Pomo Indian's earlier philosophy, "live lightly on the land," in his contribution to the overall master plan for the development. The plan incorporates a set of building guidelines that require homes to be designed and sited to blend all structures onto the natural setting and minimize the visual as well as physical impact upon the landscape. The name itself reflects a continuity and respect for the past, as Rancho Del Mar has simply been translated into the English equivalent, The Sea Ranch, which has become world-renowned for being environmentally sensitive.

Architects

The architectural firm MLTW (Charles Moore, Donlyn Lyndon, William Turnbull, and Richard Whitaker) created the unique Sea Ranch design with Condominium I, near Bihler's Point, and a number of the early homes. Joe Esherick developed the concept of the "Hedgerow Homes" along Black Point Reach and also designed the first phase of The Sea Ranch Lodge. Robert Muir Graves, recognized as one of the foremost golf course architects, blended a Scottish Links style, championship length, course into the natural landscape.

Soon, The Sea Ranch began to draw unprecedented attention in the American press and in architectural journals throughout the world. Within months came the first of what was to be a long list of environmental and architectural awards for this new community.

In May, 1991, Charles Moore was presented the American Institute of Architect's Gold Medal Award, architecture's highest honor. This was in recognition of decades of an unflinching pursuit of design excellence, education, and professionalism. At the same time, The Sea Ranch Condominium I Unit was awarded the AIA's Twenty-Five Year Award. This award is given each year to a building project, completed 25 to 35 years ago, which exemplifies a design of enduring significance that has withstood the test of time. Other buildings so honored include Frank Lloyd Wright's Guggenheim Museum and Ludwig Mies van der Rohe's Seagram Building, both in New York City, and Eero Saarinen's Gateway Arch in St. Louis. The 1991 Honor Awards Jury noted that Sea Ranch is "profoundly conscious of the natural drama of its coastal site" and has "formed an alliance of architecture and nature that has inspired and captivated a generation of architects."

The Sea Ranch

The goal of the developer was to create a community where one could come to escape the rigors of city life, walk the more than 10 mile long bluff trail in solitude, beach-comb on the sandy beaches, hike through the quiet redwoods, or simply sit on a headland such as Bihler's or Black Point to observe the whale migration in season. Other activities provided include two solar heated swimming pools, tennis, basketball, and volleyball courts, stables for boarding horses, a private airport, and The Sea Ranch Golf Links, in 1990, rated by Golf Digest "one of the five best 9-hole golf courses in the world."

The original 5200 acres of The Sea Ranch eventually became 2310 individual building sites on 3500 acres, half as dedicated, common, open space, and the remaining 1500 acres as forest preserve. The other 200 acres became Gualala Point County Park and campgrounds. The private road system totals more than 40 miles. The building sites are provided with underground utilities; water, electricity, telephone, and TV cable. By 1988, all of the individual sites had been sold. As of July, 1994, more than 1250 homes have been built, and an average of 100 new homes per year have been constructed for the last three years.

Sea Ranchers

The majority of the individuals attracted to the lifestyle of this area, quite expectedly come from the San Francisco Bay Area. As in the early years, the area is drawn upon as a resource for many of the needs of the Bay Area population. Now, instead of beef hides, lumber, and the illegal imports from Canada and Mexico, the resource is escape from the urban and suburban life, if only for an occasional weekend. This resource is the natural beauty of this coastline, the abundant wildlife, the many species of wildflowers, the sealife, the redwoods, and many, many other facets.

Those that have been able to make The Sea Ranch a full-time experience are authors, artists, composers, as well as people in aviation, consulting and others who need not occupy an urban office on a regular basis. Some are active in the Gualala Arts group, the theater group, the community garden, and all sorts of other activities. Others choose to do nothing at all in the realm of social activities. To really maintain a low profile, one may choose to retrieve mail from the local post office only after dark. Today's (Summer 1994) permanent dwellers number less than 500, well below population levels reached in the early years when even Salt Point could boast more than 1000 residents.

Villagers

In 1988, the sale of the few remaining developer sites signaled the end of another phase of evolution for this land. A group, consisting mainly of Sea Ranch property owners, formed Sea Ranch Village Inc. (SRVI) and purchased from the departing developer, Castle and Cooke Inc., the commercial property that is comprised of The Sea Ranch Lodge and Golf Links. A compelling reason for the purchase by SRVI was to insure that the commercial expansion was sensitive to the desires and environmental concerns of the other Sea Ranchers, and that the expansion and future use of the facilities would be compatible with the philosophy and lifestyle of The Sea Ranch.

Market research pointed to a small conference center facility as the most economically feasible, yet least obtrusive use of the land. The growth in the Santa Rosa-Petaluma area also enhances the economic viability of the expansion planning. By utilizing a small village format, Sea Ranchers would have a central gathering place also, with art galleries, post office, bank, restaurant, and other services.



Fig. B.1 Composite Map of the Sea Ranch

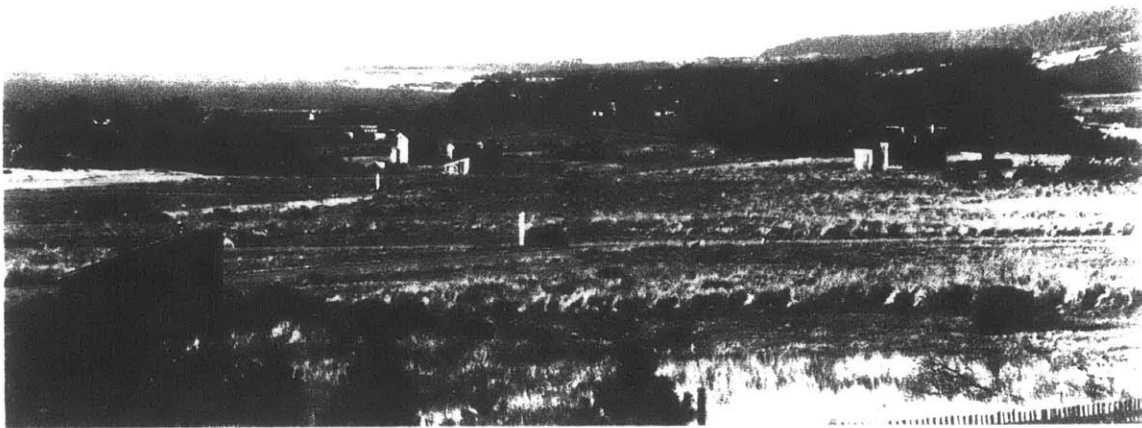


Fig. B.2 Houses in the Meadow

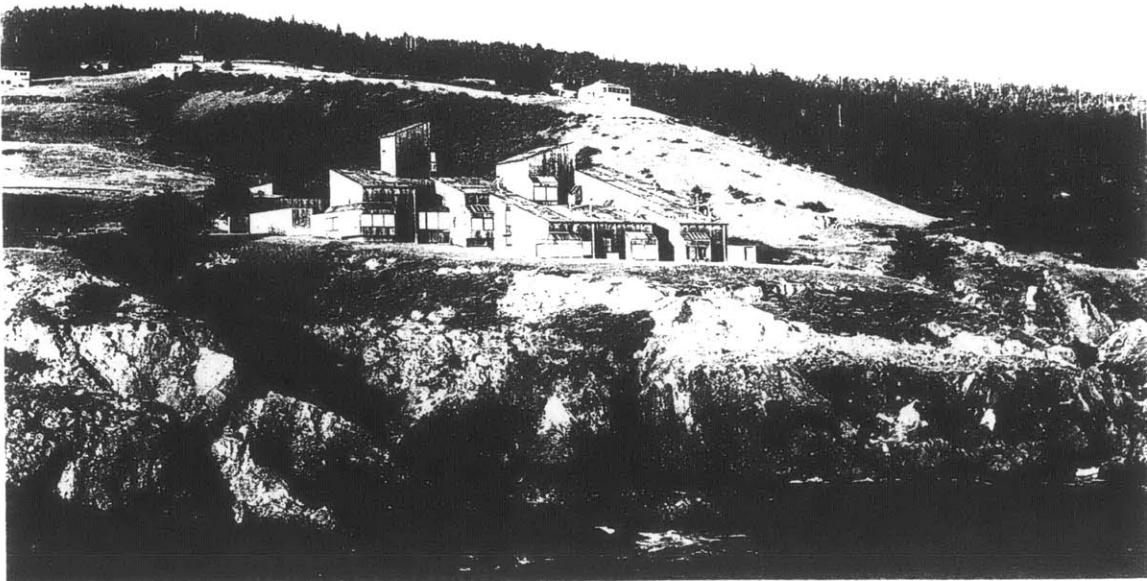
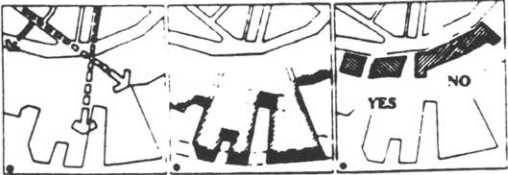
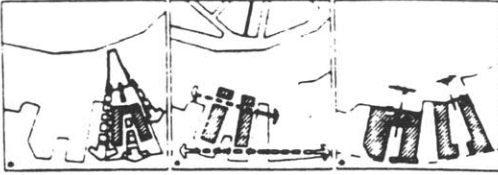
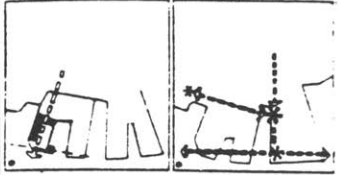


Fig. B.3 Condominium by MLTW, 1966

Inner Harbor Urban Design Framework

BUILDING TYPE	WHARF BUILDING (TYPE 1)	PIER BUILDING (TYPE 2)	AUXILIARY STRUCTURES (TYPE 3)
DEFINITION	Major building located on land or landfill behind a bulkhead	Major building located on a pier head built out over the water	Small structure built on a wharf or a pier to entrance the public use of Boston's waterfront developments and that at Harborwalk
			
BUILDING PLACEMENT & SETBACKS	<ul style="list-style-type: none"> New buildings should direct views and pedestrian movement towards the water through the protection and enhancement of view corridors from the city to the harbor. New buildings must setback a minimum of 12 feet in depth at the sides of wharves and piers; A minimum of 35 feet in depth at the seaward end of wharf; A minimum of 50 feet in depth in the seaward end of pier. 	<ul style="list-style-type: none"> Pier Buildings must not totally block the harbor view of Wharf Buildings. New developments must maintain, create and strengthen cross harbor views connecting Boston piers to each other. New piers must be sited perpendicular to the shoreline. Pier Building must comply with Harborpark setbacks. 	<ul style="list-style-type: none"> Auxiliary Structures must not block the harbor views from the city. Locate Auxiliary Structures in areas that are visible to the general public to attract pedestrian traffic to the waterfront. Locate Auxiliary Structures along cross harbor view corridors to create a sense of visual attraction along the waterfront and major pedestrian ways. Auxiliary Structures must comply with Harborpark setbacks.
GROUND FLOORS	<ul style="list-style-type: none"> Ground floor residential uses must be designed in a manner that insures the privacy of the residents without privatizing the immediate surrounding of the building. A minimum of 2 feet and a maximum of 4 feet elevated interior floors are encouraged to create a level of difference between the private residents and the public paths. Ground floors in buildings facing Atlantic Avenue/Commercial Street should be occupied by retail uses to encourage public pedestrian traffic. Neighborhood service stores as well as local business spaces are acceptable uses as well. 	<ul style="list-style-type: none"> Ground floor water-related service, restaurants, cultural or educational spaces are encouraged in buildings towards the harbor. Avoid the privatization of open spaces that are located on view corridors or public pedestrian paths connecting the City to the Harbor. Public passages cutting through buildings must be strategically located along pedestrian routes. Total visibility from one end of the passage to the other is required. The design of these passages should be inviting for the public. The dimensions must not be less than 12 feet high by 8 feet wide. 	<ul style="list-style-type: none"> Ground floors must be at grade. 65 % of the overall ground floor facade area must be transparent to insure that Auxiliary Structures do not block harbor views. The incorporation of art work in the design of Auxiliary Structures is highly recommended. Avoid creating solid - visually impenetrable walls at pedestrian level. Avoid the use of fences that privatize spaces around public paths.

Appendix D : Design Goals and Guidelines for Harborwalk

Goal #1: To Accommodate Various User Groups
Harborwalk, the physical walkway as well as the amenities on it, should be varied and stimulating, as well as inviting to people of all ages, incomes and backgrounds. This diversity will encourage people to use the walkway frequently, stay for a longer period of time and come back to use it again.

Guidelines:

- Provide for an active urban waterfront, with a variety of uses.
- Provide a range of attractions oriented towards different user groups.
- Provide a variety of water-dependent activities such as marine services, marine industrial uses, recreational marinas and boating clubs.
- Provide active recreational facilities such as tot lots, ball fields, tennis courts, fishing piers, and paddle boat basins to encourage users of all ages.
- Provide a range of eating spaces such as parks, gardens, plazas for picnickers, snack bars and cafes for modest and inexpensive dining, as well as restaurants for luxurious dining; to allow opportunities for all income levels.

Goal #2: To Maximize Physical Access

Harborwalk should maximize physical connections to neighborhood pedestrian paths as well as connections between land and water in order to facilitate physical access to the waterfront.

Guidelines:

- Provide clearly marked pedestrian paths from on-site and adjacent parking facilities, public transit stops, and neighborhood pedestrian networks by use of pavement patterns, landscaping and signage.
- Provide links from neighborhoods to the waterfront by extending and/or improving the city's pedestrian network.
- Provide improved access under the elevated expressways at existing and new

passageways to counteract the inhospitable nature of these barriers to the waterfront.

- Provide barrier-free handicapped access into and along Harborwalk and all public amenities on it.
- Provide access to Harborwalk from the water by public docking spaces and water transportation facilities.
- Provide access for bicycles at specified locations along the waterfront and make connections to existing bikeways.

Goal #3: To Maximize Visual Access

Harborwalk should maintain and create new visual connections to the waterfront and Boston Harbor.

Guidelines:

- Preserve existing views and create additional visual connections from streets, plazas and other public spaces to the waterfront and the water.
- Create new harbor vistas.
- Utilize different ways of viewing the harbor from pier ends.
- Preserve views from the water to existing landmarks.
- Enhance views to the downtown skyline through continued BRA project review.

Goal #4: To Design Harborwalk as a Major Year-Round Connector

Boston is a four season city with a host of historical, cultural and recreational attractions along its waterfront. For this reason, Harborwalk should connect and form paths to these amenities, thereby reinforcing its role as a major year-round circulation system.

Guidelines:

- Provide sheltered areas along the Harborwalk such as winter gardens and glass enclosed restaurants for viewing, and other passive activities during inclement weather.
- Provide additional cultural attractions such as museums and libraries, with stages

and small amphitheaters to reinforce year-round use.

- Provide areas for water-oriented uses such as sailing, leisure fishing, and commercial fishing to reinforce year-round use.
- Provide public sheltered areas on Harborwalk such as water shuttle terminals and water-taxi enclosures for waiting during inclement weather.
- Encourage year-round connections between attractions, amenities, and other spaces along the waterfront that provide protection, e.g., building passageways, arcades, etc.

Goal #5: To Design a Safe and Comfortable Walkway

Even though the water and water-dependent activities are the reason for Harborwalk, the users are people. Part of the responsibility of creating Harborwalk is to ensure that it is safe, convenient and comfortable. Where the waterfront has previously been scaled to ships, ocean liners and tractor trailers, the new scale in the Harborwalk, Phase I area must be scaled to people, both in its own dimensions as well as in terms of the features on it.

Guidelines:

- Encourage a mixture of uses that reinforce 24-hour activity, thereby providing communal safety.
- Provide lighting which adequately illuminates night-time use and relates to the pedestrian scale.
- Provide steps, ramps, paving, benches, planters, and railings which encourage pedestrian scale.
- Provide overlooks, signage, landscaping, and symbols which do not obscure views.
- Encourage spaces that are open which allow views from adjacent buildings, sidewalks, and roadways.

Goal #6: To Increase Historical / Cultural/Educational/ Recreational Activities

Historical, cultural, educational and recreational activities on and around Harborwalk should be increased in order to make the Harborwalk experience more interesting, stimulating and enjoyable.

Guidelines:

- Provide libraries and museums along the waterfront.
- Provide information booths and kiosks.
- Provide exhibits which display harbor history.
- Provide exhibits which explain the operation of bridges, locks, tide stations, and other technological infrastructure.
- Provide additional ball fields, tennis courts, boat clubs.

Goal #7: To Maintain a Boston City Character
Harborwalk should be authentically 'Boston' in character, so that it does not end up looking and feeling like any waterfront walkway in any other city (to differentiate it from other typical "Fishneyland" waterfronts). This will be achieved by respecting the history, traditions and character of the waterfront, and interpreting them in a modern context.

Guidelines:

- Encourage use of signage, symbols and street furnishings such as bollards, light fixtures, railings, etc., with a Boston maritime character.
- Reinforce Harborwalk's image of a path along the water's edge by using special images associated with unique symbols of waterfront uses.
- Provide memorable and tangible experiences of the waterfront, including sensory experiences of smell, touch, sound, and light.